

Workers' Compensation and Disability Retirement within the CHP

Annex A Media Articles

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BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

WORKERS' COMPENSATION/DISABILITY
RETIREMENT PROGRAM AUDIT

PROGRAM MANAGEMENT AND PROFESSIONAL STANDARDS DIVISION
SEPTEMBER 1992

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WORKERS' COMPENSATION/DISABILITY RETIREMENT
PROGRAM AUDIT

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EXECUTIVE SUMMARY
CALIFORNIA HIGHWAY PATROL
WORKERS' COMPENSATION/DISABILITY RETIREMENT PROGRAM AUDIT
SEPTEMBER 1992

Workers' compensation costs have been increasing within the California Highway Patrol (CHP) at an alarming rate over the past several years. Costs have skyrocketed from 14.7 million dollars in 1985/86 to almost 30 million dollars in 1991/92. In addition, the cost of temporary disability payments under Labor Code Section 4800 reached over ten million dollars in 1991/92. Today the cost of workers' compensation and Section 4800 benefits together represent over five percent of the Department's overall annual budget.

At the request of Commissioner M. J. Hannigan, Program Management and Professional Standards Division (PMPSD) conducted an audit of the Department's management of the workers' compensation/disability retirement programs. Specific issues and concerns were identified and a determination made that the scope of the audit should be to measure the efficiency and effectiveness of these programs. It was recognized from the onset that some of the recommendations would be beyond the Department's ability to implement absent legislative change. Bill Carlson, Golden Gate Division Chief (former PMPSD Chief), was assigned as the audit team coordinator and the remaining team members were assigned specific audit responsibilities. The audit was completed in July 1992, and presented to Executive Management on November 2, 1992.

The principle objectives of the audit were to evaluate the overall effectiveness and efficiency of the program, identify improvements to contain costs of the program, and recommend a system of measuring and reporting effectiveness. To accomplish this, the audit team reviewed prior studies on the subject; interviewed key personnel within the CHP and other State agencies, allied agencies, and private industry; and analyzed departmental policies relating to workers' compensation and disability retirements.

Subsequent to various findings, the audit team made the following recommendations:

RECOMMENDATION #1: Create an additional Associate Governmental Program Analyst (AGPA) position to serve as the fourth program coordinator in Disability and Retirement Section (DRS).

RECOMMENDATION #2: Create an additional half time clerical position in DRS.

RECOMMENDATION #3: Create a rehabilitation specialist position in DRS to coordinate and safeguard the Department's interests.

RECOMMENDATION #4: Employees in all remaining bargaining units represented within the Department; and non-represented employees be included in Government Code Section 19876.5 which was recently amended to require specified employees to submit to an evaluation to determine what type of State employment can be performed or lose disability benefits. Labor Code Section 139.5 (also recently enacted) further provides that an offer of a job within State service at similar salary and location is an offer of rehabilitation.

RECOMMENDATION #5: Evaluate the feasibility of administering rehabilitation programs internally within State service, rather than contracting for such services for those employees not qualifying under Government Code Section 19876.5 and Labor Code Section 139.5.

RECOMMENDATION #6: Support Legislation to amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for service retirement and opt to disability retire are not entitled to rehabilitation services.

RECOMMENDATION #7: Place high priority on installing computer equipment in DRS.

RECOMMENDATION #8: Command Management Plan (CMP) strategies be developed by DRS pertinent to improving services. Particular emphasis should be directed toward interaction with management and supervisory levels within the Department.

Note: This interaction should include, but not be limited to, legal updates, current trends, reporting requirements, and overall issues relating to injury claims management.

RECOMMENDATION #9: The participation of personnel within DRS should be solicited and considered in the development of CMP strategies.

RECOMMENDATION #10: Performance appraisals be completed annually by the DRS Commander as required and address the tasks associated with the Section's mission.

RECOMMENDATION #11: Disability and Retirement Section meetings should be scheduled on a periodic and regular basis, following Personnel and Training Division (P&TD) Commander's meetings, to disseminate information emanating from Top Management and to discuss decisions made in managing cases.

RECOMMENDATION #12: Personnel and Training Division develop decision-making guidelines for monetary settlements, with specific limits and decision levels approved by Executive Management.

RECOMMENDATION #13: Establish a process for recommending Compromise and Release (C&R) denials similar to existing DRS practice of analyzing and presenting Executive Management with recommendations to approve C&R settlements that are above DRS monetary approval level.

RECOMMENDATION #14: The Department set aside funds for C&R settlements in the 1993/94 budget.

RECOMMENDATION #15: Personnel and Training Division develop a comprehensive initial training program on claims management with a specific focus on supervisory and management levels within the Department.

In addition, add injury case management training to the Sergeant's Academy curriculum and increase as appropriate injury case management training being presented in existing departmental courses to enhance the ability of future supervisors and managers in managing claims.

The training program should include, but not be limited to, all pertinent information contained in this report.

RECOMMENDATION #16: Personnel and Training Division develop a "Commander's Reference Book" which would include:

- 1) comprehensive guidelines for managing workers' compensation claims and disability retirement cases, and;
- 2) information explaining the roles and responsibilities of DRS, State Compensation Insurance Fund (SCIF), Workers' Compensation Appeal Board (WCAB), and Public Employees Retirement System (PERS).

It is envisioned that the reference book would also serve as a guide and source document for the recommended workers' compensation training program discussed in Recommendation #15.

RECOMMENDATION #17: Establish a requirement that Commanders be personally involved in claims management, particularly with problem cases. If the Commander is unable to work directly with the SCIF adjuster to manage claims he/she shall ensure a subordinate assumes this responsibility. If the Commander elects to delegate the responsibility he/she must continue to follow-up and monitor the activities of each ongoing case.

RECOMMENDATION #18: Revise the Commanders' CHP 118C to include a critical task addressing workers' compensation claims management. To adequately evaluate Commanders on this task it will be necessary for Division Chiefs to develop a tracking system for off duty injured employees for purposes of monitoring results.

Note: The Commanders will have access to DRS computer system which will have the capability of providing an abundance of data, including claims costs (estimated and paid) sorted in virtually any desired array.

RECOMMENDATION #19: A workers' compensation refresher training course be provided on a regional basis as necessary.

RECOMMENDATION #20: Personnel and Training Division develop WCAB guidelines for use by Commanders and their subordinate supervisors including evidentiary rules unique to the process.

RECOMMENDATION #21: Provide each Field Division with a resource expert to assist Area/section Commands in managing workers' compensation claims.

Recognizing the current budgetary constraints, the audit team recommends these positions be reallocated from existing positions within each Field Division.

RECOMMENDATION #22: Provide a memorandum outlining the Department's expectations to employees who will be off duty for an extended period of time. The memorandum should also address the Commander's concern for the employee's welfare and the benefits available.

Note: Avoid using the same basic memorandum repeatedly, or else it will become stale.

RECOMMENDATION #23: Commanders should make frequent contact with injured employees who are off duty for purposes of showing concern for their well-being. It should be clearly established that Commanders have a responsibility for

maintaining contact with injured employees and, as such, they have every right to maintain an ongoing dialogue even when the employee has engaged the services of an attorney.

RECOMMENDATION #24: Personnel and Training Division incorporate in Department policy a requirement that Commands maintain a visual tracking system of off duty injured employees.

RECOMMENDATION #25: Personnel and Training Division develop specific guidelines for approving fitness for duty examinations at Division level. These guidelines should include information relating to the distinction between fitness for duty examinations and medical evaluations arranged through SCIF.

RECOMMENDATION #26: Personnel and Training Division, with the cooperation of the Investigation Unit (IU), within Bureau of Internal Affairs (BIA), prepare guidelines to distinguish fraudulent claims or abuses of the system from legitimate claims. These guidelines should also address the ethical considerations associated with both workers' compensation claim reporting and management. This information should be included in the training proposed in Recommendation #15.

RECOMMENDATION #27: Interim training be presented to Division and Area Commanders on the pertinent issues surrounding workers' compensation to serve as a "bridge" between the time this audit is released and formal training is implemented. The interim training should be presented jointly by DRS, BIA, and SCIF at Division Area Commanders Conferences during 1993.

RECOMMENDATION #28: Personnel and Training Division establish guidelines to be followed by local Commanders for selecting reputable 24-hour medical clinics. These guidelines should be incorporated into the reference book proposed in Recommendation #16 and included as part of the training program in Recommendation #15.

RECOMMENDATION #29: Personnel and Training Division establish guidelines for Commanders to include: 1) retaining a current list of approved physicians; 2) methods of reporting unsatisfactory service, and; 3) a means for removing the physician from the approved list if allegations of unsatisfactory service are justified.

RECOMMENDATION #30: Personnel and Training Division, with the assistance of the Office of Employee Relations (OER) and the Department's legal counsel, support legislation to modify the medical evaluation process to be patterned after the arbitration procedure currently used to resolve employee/employer relation disputes.

RECOMMENDATION #31: Personnel and Training Division, with the cooperation of PERS legal staff, determine the legal feasibility of discontinuing off duty PPP injuries as job related. This will necessitate a change in the Unit 5 contract for STO and revisions to policy in HPM 70.9, Physical Performance Program Manual, for Sergeants and above.

RECOMMENDATION #32: Personnel and Training Division continue to work with SCIF to assure that adjusters are performing their responsibilities satisfactorily and that they are not transferred arbitrarily.

RECOMMENDATION #33: Personnel and Training Division develop guidelines for Commanders to establish and maintain a liaison with regional SCIF managers to enhance the working relationships with SCIF adjusters and provide continuity in claims management.

RECOMMENDATION #34: Personnel and Training Division request SCIF modify its policy to assign cases to SCIF adjusters based on the employee's work location rather than the employee's residence.

RECOMMENDATION #35: Legislation be sponsored by the Department to amend Labor Code Section 3202 requiring WCAB judges to interpret workers' compensation laws "equitably" rather than "liberally and in favor of the employee."

RECOMMENDATION #36: The Department's legal counsel further research the issue of enhancing service retirements to confirm or rebut PERS legal opinion that it is not feasible.

RECOMMENDATION #37: Propose legislation (similar to Government Section 21300) to establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement for uniformed employees.

Note: Recommendation #4 and #5 addresses rehabilitating employees in other State job classification within PERS.

RECOMMENDATION #38: The Department take a proactive role in supporting legislation beneficial to improving management of the workers' compensation system. In addition, Department of Personnel Administration (DPA) be advised of the Department's position and lobby for their support.

RECOMMENDATION #39: Legislation be sponsored by the Department to align the provisions of Labor Code Section 4800 with Section 4850, which applies to all local law enforcement agencies.

RECOMMENDATION #40: The Department initiate steps to challenge the Amborn decision, which effectively entitles a member of the CHP who is disabled temporarily or permanently by an industrial injury to a full year's salary in lieu of disability payments.

RECOMMENDATION #41: Propose legislation to provide continuance of salary (to be reimbursed by PERS) from the time the injury is declared permanent and stationary until the disability retirement pension begins.

RECOMMENDATION #42: Personnel and Training Division, with assistance from the Department's legal counsel and OER, develop a proposal to legislatively redefine "incapacitation for continued employment" in Vehicle Code Section 2268 to parallel the standard PERS uses to determine "incapacity" for local law enforcement agencies. That standard is interpreted to mean "the substantial inability of an individual to perform his/her usual duties."

RECOMMENDATION #43: Eliminate the 19 medical standards and when the new physical demands survey is completed and validated, utilize those standards to evaluate employees for disability retirement.

RECOMMENDATION #44: Personnel and Training Division ensure that DRS includes in its computer program the capability to track disability retirements and their relationship to mandatory reinstatements and subsequent retirements.

RECOMMENDATION #45: Evaluate mandatory reinstatement requests more thoroughly to include Investigations Unit (IU) in the review process to identify potential improprieties early and assure appropriate investigative steps are pursued.

RECOMMENDATION #46: Personnel and Training Division initiate steps to form a workers' compensation committee comprised of Division Chief level representatives from the CHP and equivalent level executives from PERS, SCIF, DPA, Division

of Workers' Compensation, and the WCAB. California Highway Patrol representatives should include the P&TD Chief and Assistant Chief commanding the BIA.

Note: The WCAB may decline participation because of its role in deciding workers' compensation issues.

RECOMMENDATION #47: The Department's fiscal auditors are currently reviewing a random sampling of medical bills submitted for payment. If it is determined medical bills are appropriate and justified, no further action need be taken.

If, however, it is determined that medical bills are being paid for either services not rendered or the fees charged exceed the relative value scale, it is recommended that P&TD explore the feasibility of employing a third party administrator for purposes of auditing medical bills. The services of third party administrators can be obtained at a fee based on a percentage of the savings realized.

INTRODUCTION

At the request of Commissioner M. J. Hannigan, Program Management and Professional Standards Division (PMPSD) conducted an internal audit of the Workers' Compensation/ Disability Retirement Program. The audit was completed in July 1992.

BACKGROUND

California's workers' compensation system was first implemented upon the enactment of the Workers' Compensation Insurance and Safety Act of 1917. The objectives of the law are fairly simple. Employers are responsible for job related injuries to their employees regardless of fault and employees relinquish their right to sue for negligence under tort liability laws. In theory, both sides benefit from this no-fault system. Employees are compensated quickly, through full payment of their medical expenses and benefits sufficient to avoid hardship while still providing an incentive to return to work. Employers benefit by avoiding prolonged and costly court battles. The purpose of the system, as originally designed, was to provide prompt, adequate, and equitable compensation to injured workers.

Unfortunately, due to expansive legal precedent and intensive and successful lobbying by a number of special interest groups, the program's coverage has been increased while its value to seriously injured workers has eroded. As a result, California's insurance premium costs are among the highest in the nation, while the actual benefits to employees are disproportionately low.

Many segments of the State's economy, in addition to injured employees and their families, benefit from the workers' compensation system. Because of the dependence these entities have on the system, an incentive exists to keep the system growing and exploit opportunities to increase the amount of money they may receive. These interest groups include the insurance industry, the legal and judicial community, the medical services industry, and vocational rehabilitation services.

The workers' compensation system today has evolved far beyond its original intent of being a no-fault system. The Labor Code requires that Workers' Compensation Appeals Board (WCAB) judges interpret workers' compensation laws liberally and in favor of the applicant. The parameters for compensation have been broadened and the types of injuries covered under the laws have expanded greatly. The California Taxpayers' Association concluded in a recent survey of workers'

compensation and disability trends, that the courts have "established the principle that virtually any casual connection between an employee's physical or emotional condition on the job, however remote, becomes compensable under workers' compensation." This principle has the system evolving into a general health and welfare system financed entirely by employers. As a result, employers today are held responsible for normal processes of aging; and even poor personal health practices which result in conditions such as hearing loss, hardening of the arteries, and hypertension.

CALIFORNIA HIGHWAY PATROL (CHP) WORKERS' COMPENSATION BACKGROUND

Uniformed employees of the CHP, because of their peace officer status, have enhanced benefits available to them whenever they incur job related injuries. The generous nature of industrial disability retirement benefits for patrol members, although not technically workers' compensation benefits, do affect the use and abuse of workers' compensation entitlements. This is because the patrol member has the ability to parlay an industrial injury beyond temporary disability benefits into a disability retirement.

The CHP's full duty policy, which precludes assigning uniformed employees to permanent limited duty positions, also acts as a driving force when job incurred disabilities occur. Department policy addressing the full duty requirement is contained in General Order 10.5, Critical Duty Capability Required of All Uniformed Employees. The policy is an outgrowth of Vehicle Code Section 2268, which mandates that all members of the CHP must "be capable of fulfilling the complete range of official duties administered by the Commissioner . . . and other critical duties that may be necessary for the preservation of life and property . . . , and directs that members shall not be assigned to permanent limited duty" As a result, whenever an employee sustains a job related injury and it is determined the employee cannot perform the full duties of a State Traffic Officer (STO), there is no option for the Department but to retire the employee.

Disability retirements have steadily increased since the Department's full duty policy was established under Vehicle Code Section 2268 in January 1984. In 1978, prior to its enactment, 57 percent of CHP uniformed employees received disability retirements. By 1990, the percentage had increased to 82 percent (see Exhibit A). In 1991, disability retirements decreased to 63 percent; however, it is believed

the percentage decreased due to a rise in service retirements following a change in calculating retirement benefits from the average salary of the three highest years to the single highest year.

Workers' compensation costs are also increasing significantly each year. For example, during the 1985/86 fiscal year, the Department spent 14.7 million dollars for workers' compensation benefits and by fiscal year 1991/92, the costs had grown to 29.9 million dollars (see Exhibit B). It should be noted these costs do not include benefits provided for under Labor Code Section 4800 which in fiscal year 1991/92 totalled over ten million dollars.

Vocational rehabilitation costs are also placing a significant burden on the Department. Although the theory behind vocational rehabilitation is commendable, there are very few successes, particularly when considering the costs of the program. It is estimated that 15 percent of workers' compensation costs are devoted to vocational rehabilitation, very little of which results in new employment for disabled employees. Many times, vocational rehabilitation professionals ignore existing transferable skills, and order vocational rehabilitation plans with questionable probability of success. Sometimes due to poor plan management, second and third plans have been ordered. Finally, there is very little control over the rehabilitation counselor's activities and expenditures.

An additional benefit extended to patrol members which is not available to the general population of employees is the ability to collect a disability retirement while working full-time at another occupation. The State does not apply an earnings test or earnings offset and as a result, disability retirement allowances remain constant regardless of the amount of salary or compensation the disabled employee makes in another occupation. In other words, a patrol member may be disabled only for the purpose of performing the duties of a uniformed employee of the CHP yet in reality, be totally capable of full-time work in another occupation.

Ironically, California Public Employees' Retirement Law (Section 21157) provides retired employees an option to accept another position within State service as an alternative to employment outside the Public Employees Retirement System (PERS). However, participation is not mandatory and there is no financial incentive for doing so. In fact, Section 21157 actually encourages retirees to seek employment outside of PERS since those who accept another

position within State service will find their total compensation (disability retirement and salary) capped at their salary level upon retirement. As a result only the most highly motivated employees elect to take this option.

MISSION

The CHP's (Department) intent is to administer the Workers' Compensation/Disability Retirement Program to reduce the personal and fiscal impacts which service-connected injuries have on employees and the Department. The program objectives are to:

1. Provide appropriate benefits to qualified disabled employees, including medical, disability, and rehabilitation benefits.
2. Provide for the prompt and effective reporting of injuries.
3. Return disabled employees to work as soon as medically appropriate.
4. Maintain ongoing communication with injured employees.

SCOPE

The scope of the PMPSD audit is to measure the efficiency and effectiveness of the Department's Workers' Compensation/Disability Retirement Program.

AUDIT OBJECTIVES

The objectives of our audit were to:

1. Evaluate the effectiveness of the program and determine if the objectives are being achieved.
2. Determine if there is compliance with laws and regulations applicable to the program.
3. Evaluate management's effectiveness.
4. Determine whether the Department is applying program resources efficiently.
5. Identify improvements to contain the costs of the program.

6. Recommend a system of measuring and reporting effectiveness.
7. Analyze Labor Code Section 4800 which applies to CHP and the effects of the Amborn decision.

METHODOLOGY

Based upon a preliminary review of the laws, regulations and guidelines which govern the program, including the policy and procedures contained in various departmental manuals, an initial audit guide (program) was developed. Audit work included:

- o Interviewing key personnel from every Division, 29 Area Commands, Department of Personnel Administration (DPA), PERS, State Compensation Insurance Fund (SCIF), allied law enforcement agencies, and Hunt-Wesson, Incorporated.
- o Reviewing and incorporating relevant information gained from prior studies.
- o Analyzing the limited duty policy, the 19 critical tasks, and the fitness for duty examination process.
- o Reviewing SCIF's invoices.
- o Analyzing the reinstatement policy.
- o Reviewing our Physical Performance Program (PPP) standards.
- o Analyzing current Senate and Assembly bills which address workers' compensation.

Due to the nature of the audit some of the recommendations are beyond the Department's authority to implement. Legislative changes will have to be proposed and sponsored to amend the laws that govern workers' compensation. Currently the laws are clearly in favor of the employee.

During our examination, the auditors primarily concentrated on uniformed personnel, however, nonuniformed personnel were also taken into consideration.

AUDIT FINDINGS AND RECOMMENDATIONS

FINDING #1: The Disability and Retirement Section (DRS) is understaffed.

DISCUSSION: Disability and Retirement Section is located within the Department's Personnel and Training Division (P&TD). The DRS is commanded by a Staff Services Manager II (SSM II) who supervises three Associate Governmental Program Analysts (AGPAs). The AGPAs are assigned as program coordinators for the purpose of managing workers' compensation claims and disability retirement cases. The Section has a support staff of one Office Services Supervisor (OSS) and three and one half Office Assistants (OAs). The 1992/93 budget contains a request for one additional position at the Staff Services Analyst (SSA) level.

The workload of DRS is, and has historically been, beyond the capabilities of the assigned staff. Currently, for example, each AGPA has an ongoing caseload of 1,200 to 1,300 active workers' compensation claims and disability retirement cases. Of these, 80 to 90 disability retirement and reinstatement cases require hands-on management by each AGPA. Additionally, each AGPA has an ongoing major caseload of approximately 200 workers' compensation claims which require extensive interaction with both departmental Field personnel and SCIF employees.

At one time, DRS had four full-time program coordinators with one coordinator responsible for monitoring vocational rehabilitation programs. With the loss of that position, the existing program coordinators must focus almost entirely on claims management, leaving their personal involvement in vocational rehabilitation to a bare minimum and on an exception basis only. See Finding #2 on vocational rehabilitation.

The DRS's heavy caseload prevents coordinators from fulfilling the important role of providing training, guidance, and advice to Field personnel; thus precluding the transfer of claims management responsibilities to line supervisors and managers. As a result, DRS is unable to proactively manage claims and gain control over the rising cost of workers' compensation.

Stated in economic terms DRS is responsible for managing a nearly 40 million dollar program (over five percent of the Department's 1991/92 budget) with only four professional level employees.

RECOMMENDATION #1: Create an additional AGPA position to serve as the fourth program coordinator in DRS.

RECOMMENDATION #2: Create an additional half time clerical position in DRS.

FINDING #2: The DRS does not have sufficient staff to adequately monitor the vocational rehabilitation program.

DISCUSSION: Until January 1989, DRS had a full-time vocational rehabilitation specialist who reviewed vocational plans. The specialist successfully negotiated plans that were deemed too extravagant, thus routinely reducing the cost per plan by \$2,000 to \$3,000. In one case, \$70,000 was saved by the specialist's intervention. The specialist ultimately left the Department and the position was redirected. Currently, DRS interaction with the rehabilitation program is very limited. Each analyst coordinates his/her own cases through SCIF and SCIF oversees the program. State Compensation Insurance Fund utilizes private contractors to evaluate and provide vocational rehabilitation to injured workers. After a vocational rehabilitation plan is selected, approved and completed there is no follow-up to determine if the employee is gainfully employed.

According to Ms. Dorothy Driffill, Vocational Rehabilitation Counselor for SCIF's Sacramento office, the Department is currently rehabilitating employees in fields such as cosmetology, automotive mechanics, real estate appraisal, floral arranging/designing, and investigations, to name a few. The costs of these plans range from \$4,654 to \$49,187. Ms. Driffill currently has four plans (two attorneys and two flight instructors) which have been denied and awaiting the appeal process. The employee has the right to appeal SCIF's decision with the Department of Industrial Relations (DIR) hearing the appeal. A Bureau conference is scheduled by DIR's, Rehabilitation Unit. At the conference, the following groups are present: a SCIF representative; the employee; the employee's attorney; the rehabilitation coordinator (vendor), and; the DIR rehabilitation consultant. If the vocational plan is disapproved, the employee can appeal the decision and order to the WCAB. The employee continues to receive maintenance benefits during the appeal process.

The Department's vocational rehabilitation yearly costs were not available. According to Mr. Derrick Day of SCIF's Sacramento office, SCIF does not track (by year) the total costs expended. Currently, costs are by individual case. It should be noted that DRS does not have the ability to track these costs at this time.

The law mandates that employers are responsible for providing vocational rehabilitation to injured employees. The Court of Appeal has ruled the provisions of Labor Code Section 139.5 are applicable to employees of the State and local public entities (counties, cities, districts). This makes vocational rehabilitation a matter of right for "qualified

injured workers." An injured worker must have both "medical eligibility" and "vocational eligibility" to be a qualified injured worker.

One is deemed to have "medical eligibility" if the effects of the injury (whether or not combined with residuals of any prior injury or disability) permanently preclude, or are likely to preclude, the employee from engaging in his/her usual or customary occupation or the position in which the employee was engaged at the time of injury.

"Vocational eligibility" is based upon a determination that the employee can reasonably be expected to return to suitable gainful employment or self-employment through the provision of vocational rehabilitation services. Thus, it is not enough that an employee cannot return to his/her previous type of work.

It must also appear that training or retraining will be effective in returning the worker to the labor market to a meaningful extent. The principle of feasibility is evident in the rules. "Suitable gainful employment," or self-employment, must be "reasonably attainable" and offer an "opportunity to restore the employee as soon as practicable and as near as possible to maximum self support, due consideration being given to the employee's qualifications, vocational interests and the aptitudes, pre-injury earnings and future earning capacity, and present and projected labor market."

Labor Code Section 6200, "Rehabilitation procedures; purpose of division," states, "Every public agency, its insurance carrier, and the State Department of Rehabilitation shall jointly formulate procedures for the selection and orderly referral of injured full-time public employees who may be benefited by rehabilitation services and retrained for other positions in public service. . . The primary purpose of this division is to encourage public agencies to reemploy their injured employees in suitable and gainful employment." Research conducted by the California Workers' Compensation Institute (CWCI) consistently showed that plans involving a modified job or alternative work with the same employer produce the best results.

In contrast, formal schooling, the most expensive and least successful form of rehabilitation, is the most common, accounting for more than half of all plans and more than half of total costs. A major factor in the increased popularity of schooling plans may be the preference of the worker's attorney. If the worker is represented by legal counsel, a

schooling plan is more than twice as likely to be developed and implemented as other types of vocational rehabilitation.

California Public Employees' Retirement Law, Section 21157, states, "A person retired for disability who has not attained the mandatory age for retirement applicable to persons in the employment in which he will be employed, and whom the board finds not disabled for such employment, may be employed by any employer without reinstatement from retirement in a position in the same member classification. His disability retirement pension shall be reduced during such employment to an amount which, when added to the compensation received, shall equal the maximum compensation earnable by a person holding the position which he held at the time of his retirement. Any such employment shall terminate upon his attainment of the mandatory retirement age for persons in such employment."

Unfortunately, the provisions of Section 21157 are not mandatory, nor are there any financial incentives for accepting another position within State service. In fact, Section 21157 actually encourages retirees to seek employment outside of State service because their total compensation (disability retirement and salary) is capped at their pay level upon retirement. As a result only the most highly motivated employees elect to take this option.

It is estimated that 15 percent of the costs of workers' compensation is devoted to vocational rehabilitation. The average cost to rehabilitate an injured worker is \$22,000 and SCIF reports they are now seeing costs of \$26,000 to \$28,000.

There are three costs associated with vocational rehabilitation. First, the employee receives maintenance benefits (Labor Code Section 6203, Subsistence Allowance) to help replace lost wages while the worker receives rehabilitation services. The benefit is based on two-thirds of average weekly earnings subject to a maximum compensation rate of \$336 per week for employees injured on January 1, 1991, or thereafter and \$246 for injuries occurring prior to that date. These benefits account for the largest portion of the vocational rehabilitation dollar, typically about half of the total cost. Secondly, the cost of evaluation, testing, development, and implementation of a specific return-to-work plan, job placement assistance and other rehabilitation counseling services represent about one-third of the costs. Finally, out-of-pocket expenses related to the rehabilitation plan, i.e., tuition, books,

transportation, tools, uniforms, food, and lodging while the worker is away from home, and even child care in some instances account for the remainder of these costs. The longer the plan, the longer the need for maintenance payments and the services of rehabilitation counselors.

Recent legislation delivered a restructuring of the process, but further changes are needed if vocational rehabilitation is to be more effective, efficient, and responsive to the employee's needs. Under new federal law, the Americans with Disabilities Act (ADA) of 1990, the employer must make reasonable work place accommodations for an employee with a known disability, and a covered employer can avoid that obligation only by showing undue hardship. Discrimination against a disabled worker who can perform the essential functions of a particular job is prohibited, and violation entitles the disabled employee to back pay, job reinstatement, promotion, and attorney fees. The ADA went into effect July 26, 1992, for employers with more than 25 workers. The full impact will remain unknown until "reasonably accommodate," "undue hardship" and other threshold issues are defined and undoubtedly litigated.

It is the opinion of this audit team that a vocational rehabilitation specialist within DRS could provide the Department the opportunity to research vocational rehabilitation programs in other departments, locate suitable employment for disabled employees, and challenge costly plans; thus providing the Department with the capability of keeping a tighter rein over vocational rehabilitation costs. In addition, the specialist would be responsible for tracking the costs of a rehabilitation plan, the vocation selected, and whether the employee remains employed in the area rehabilitated.

Subsequent to issuance of the draft report, the audit team discovered that Assembly Bill 1061 was passed and chaptered on September 29, 1992. The amendment to Section 19876.5 of the Government Code and Section 139.5 of the Labor Code impacts state employees' vocational rehabilitation benefits.

Section 19876.5 of the Government Code is amended to read: "State employees in state bargaining units 1, 4, 15, 18, and 20 who suffer a job-related injury or illness and become eligible for vocational rehabilitation under Section 139.5 of the Labor Code on or after January 1, 1993, shall first be subject to an evaluation to determine what type of state employment can be performed. The evaluation shall include vocation rehabilitation when deemed appropriate, based on a

medical evaluation and previous experience. Disability benefits shall be contingent on the employee's agreement to cooperate and participate in a reasonable and appropriate vocational rehabilitation plan necessary to continue state employment."

Section 139.5 of the Labor Code is amended to read: "... (g) An offer of a job within state service to a state employee in State bargaining unit 1, 4, 15, 18, or 20 at the same or similar salary and the same or similar geographic location is a prima facie offer of vocation rehabilitation under this statute."

PERSONNEL AND TRAINING DIVISION RESPONSE: Disability and Retirement Section's personnel voiced their concern that workers' compensation benefits should not be included in collective bargaining negotiations.

RECOMMENDATION #3: Create a rehabilitation specialist position in DRS to coordinate and safeguard the Department's interests.

RECOMMENDATION #4: Employees in all remaining bargaining units represented within the Department; and non-represented employees be included in Government Code Section 19876.5 and Labor Code Section 139.5.

RECOMMENDATION #5: Evaluate the feasibility of administering rehabilitation programs internally within State service, rather than contracting for such services for those employees not qualifying under Government Code Section 19876.5 and Labor Code Section 139.5.

RECOMMENDATION #6: Propose Legislation to amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for service retirement and opt to disability retire are not entitled to rehabilitation services.

FINDING #3: The DRS lacks computer technology.

DISCUSSION: Beginning in 1986, DRS has been actively seeking approval to computerize its records. Without computerization, DRS program coordinators are performing extensive hand tallying and documentation just to maintain the necessary logs, summaries, files, and records associated with their cases. Valuable clerical and program coordination time is being devoted to meticulous, repetitive work which causes program management to suffer. Computerization is critical to gaining control of rising workers' compensation costs and the management of claims.

The auditors were advised that the final conversion to the new automated system is expected in the first quarter of 1993. It is the opinion of this audit team that the computer program being developed should include the following:

- o Data from CAL-OSHA logs, annual summaries, and CHP 113s from all Commands.
- o Injury case files.
- o Files summarizing the more important information on each employee's injury.
- o Files on all retirements.
- o Vocational rehabilitation cases.
- o A tracking system of reinstatements for purposes of monitoring their longevity and current status.

RECOMMENDATION #7: Place high priority on installing computer equipment in DRS.

FINDING #4: Disability and Retirement Section does not fully utilize the Department's Command Management Plan (CMP) goal setting process.

DISCUSSION: The DRS Commander does not believe the CMP process is appropriate for the Section because the ability to accomplish goals are oftentimes beyond his control. Nevertheless, the DRS Commander prepares a CMP each year addressing the departmental objective to improve internal services. He does not seek input from his staff nor does he share the product with them. The staff indicated that they had not seen the CMP nor were they aware of DRS goals or strategies, yet they echoed the Commander's comments relating to the inappropriateness of the CMP goal setting process to their Section.

PERSONNEL AND TRAINING DIVISION RESPONSE: A written response from DRS indicated implementation of Recommendation #8 may lead to a need for increasing staffing levels within the Section, which is a major limitation. In a follow-up meeting DRS reiterated their frustration with the CMP process. Their specific concern is that the CMP focuses on process rather than results, and as such is nothing more than a paper exercise.

AUDIT TEAM RESPONSE: It is not anticipated that Recommendation #8 will necessarily result in an increased workload for DRS staff. Instead, the audit team is only recommending that DRS develop strategies relative to their overall mission, which falls under the Department's CMP objective to improve service to the public.

The audit team acknowledges the frustrations of DRS regarding the CMP process. Nevertheless the CMP is the Department's existing system for accomplishing its overall mission and as such should be appropriately utilized by all command levels.

RECOMMENDATION #8: Command Management Plan strategies be developed by DRS pertinent to improving services. Particular emphasis should be directed toward interaction with management and supervisory levels throughout the Department. This interaction should include, but not be limited to, legal updates, current trends, reporting requirements, and overall issues relating to claims management.

RECOMMENDATION #9: The participation of personnel within DRS should be solicited and considered in the development of CMP strategies.

FINDING #5: Disability and Retirement Section's performance appraisals are not completed in a timely manner and the narrative comments are not mission or goal oriented.

DISCUSSION: A review of DRS staff personnel folders revealed performance appraisals were not being completed in a timely manner and the narrative comments were not goal or mission oriented. With a few exceptions, all of the narrative comments were generic and nonspecific.

RECOMMENDATION #10: Performance appraisals be completed annually by the DRS Commander as required and address the tasks associated with the Section's mission.

FINDING #6: Meetings are not routinely held within DRS to share information.

DISCUSSION: In discussions with DRS staff, the audit team found the focus of program coordinators to be narrowly confined to their specific workload. The staff members believe that regularly scheduled meetings were unnecessary; however, they do meet informally to discuss relevant issues.

RECOMMENDATION #11: Disability and Retirement Section meetings should be scheduled on a periodic and regular basis following P&TD Commander's meetings, to disseminate information emanating from Top Management and to discuss decisions made in managing cases.

FINDING #7: Guidelines for decision-making on significant issues such as monetary limits and Compromise and Release (C&R) settlements are not clearly delineated.

DISCUSSION: A lack of knowledge exists within the Department regarding guidelines for decision-making in these areas. Currently, informal guidelines are utilized by DRS in determining when decision-making is elevated to a higher level. Proposed C&R settlements below \$20,000 are approved by DRS. Decisions involving monetary limits of \$20,000 to \$30,000 are made only after verbal discussions with the Assistant Commissioner, Staff. All decisions involving monetary settlements above \$30,000 require a face-to-face meeting with the Assistant Commissioner, Staff. Additionally, the DRS Commander has the authority to deny any C&R settlements, regardless of the dollar amount, without consulting higher levels of authority.

PERSONNEL AND TRAINING DIVISION RESPONSE: Concern was expressed by DRS that information gathered from SCIF relative to C&R settlements only addresses the subject from the insurance industry perspective. Their goal is to close cases as quickly as possible and adjusters are evaluated on their rate of success in reaching settlements through the C&R process. As a result, DRS believes SCIF recommendations are not totally objective. Examples to support DRS opinion include:

- o State Compensation Insurance Fund tends to present only the reasons supporting C&R settlements and does not address those factors supporting denials. Many denials by DRS have been based upon an inadequate defense by SCIF on the claim, thus inflating the settlement value to the employee with a financial disadvantage to the Department.
- o No empirical evidence has ever been developed to show C&R settlements are financially advantageous to the employer. At best, SCIF projections of potential cost savings are debatable; at worst they are a poor gamble.

Disability and Retirement Section believes all proposals by SCIF for C&R settlements should be reviewed by the Department to assure final recommendations are based upon an objective analysis.

RECOMMENDATION #12: Personnel and Training Division develop decision-making guidelines for monetary settlements, with specific limits and decision levels approved by Executive Management.

RECOMMENDATION #13: Establish a process for recommending C&R denials similar to existing DRS practice of analyzing and presenting Executive Management with recommendations to approve C&R settlements that are above DRS monetary approval level.

FINDING #8: There are no funds set aside for C&R settlements.

DISCUSSION: A perception exists among employees of the SCIF that the Department is unwilling or hesitant to utilize the C&R process to resolve workers' compensation claims. This approach is commonly used in private industry as a means of providing an immediate financial settlement to the employee which terminates the employer's future liability for the injury. This process is only used when an employee has terminated his/her employment and moved into the disability retirement arena. The Department mainly utilizes the Award for Stipulation process which settles the permanent disability to the claimant and provides for future medical coverage.

After numerous discussions with the audit team, SCIF has recommended that the Department reconsider its policy on C&R settlements. State Compensation Insurance Fund encourages C&R settlements whenever it appears the up front costs will be considerably less than the potential outcome of utilizing the stipulation agreement approach. It would be advantageous to offer a structured settlement (C&R) to end all liability and meet the requirements CHP has maintained of providing the best for its employees. Following are summaries of two example cases submitted by the SCIF to illustrate potential savings:

- o Mr. John Roberts retired in 1980 with a 28 1/2 percent disability rating for gastrointestinal problems. This rating was increased in 1982 to 59 percent for a permanent disability with future medical coverage for both Mr. Roberts' heart and cardiovascular system.

In April 1982, the SCIF requested a C&R settlement in the amount of \$75,000 which was denied by the CHP due to budget constraints. Since that time, Mr. Roberts' condition has worsened and his medical costs have continued to increase. He is presently awaiting a heart

transplant at Stanford University, and if he is successful in this endeavor, it is projected that the costs of his injury will be nearly one million dollars.

- o Mr. Ronald Kienbaum was employed by this Department as a STO for 22 years. Mr. Kienbaum's injuries include hypertension and cardiovascular problems dating back to 1979. In November 1985, Mr. Kienbaum received a permanent disability rating of 22.2 percent with future medical treatment. He suffered a mild stroke in February of 1991, which was directly related to the hypertension. The Agreed Medical Examiner's report on March 23, 1992, places Mr. Kienbaum in Category F (a standard 50 percent rating) with a preclusion for no undue emotional stress, which has increased his rating to 76 percent. Mr. Kienbaum qualifies for vocational rehabilitation and a plan has been set-up for him to teach skeet shooting. Currently, Mr. Kienbaum is not able to pursue this plan due to physical limitations.

Although Mr. Kienbaum's injuries are serious, to date they have not been of great expense to the Department; however, it is anticipated that Mr. Kienbaum's future medical needs will begin to soar. According to the actuarial charts, Mr. Kienbaum's life expectancy is 22 years. Calculations for projected future medical costs are nearly \$150,000 without taking into consideration the potential costs in the event of a heart transplant or massive stroke.

In Mr. Kienbaum's case, SCIF is proposing a C&R settlement in the form of a structured settlement. In this scenario, the Department would pay \$350,000 to SCIF. The funds would then be invested over a period of years. Mr. Kienbaum would receive a settlement of \$85,000 initially, a monthly stipend for up to 10 years, and lump sum payments every five years, concluding in 20 years. This approach would ultimately provide Mr. Kienbaum with \$731,000.

RECOMMENDATION #14: The Department set aside funds for C&R settlements in the 1993/94 budget.

FINDING #9: There is a lack of trust on the part of employees that management will treat them fairly when managing their workers' compensation claim. Additionally, a lack of understanding exists on the part of Commanders and supervisors statewide regarding their respective roles and authority (and that of DRS, SCIF, WCAB, and PERS) in workers' compensation claims management and disability retirement case review.

DISCUSSION: The workers' compensation system has become increasingly adversarial since its inception. The growing involvement of attorneys has further separated departmental managers from their employees. Today, this lack of trust is so prevalent that even supervisors and managers are reluctant to provide advice to injured employees. In many cases, they are actually recommending that the employee contact legal counsel.

Trust must begin at the reporting of the injury. Commanders, subordinate supervisors, and managers should be aware of their responsibility to ensure that employees who report injuries are given prompt and adequate medical care and whenever possible, ensure these employees are returned to work as soon as they are able to do so. It is believed that better educated and informed supervisors and managers, coupled with the knowledge on the part of employees that they will be treated equitably and fairly, will create trust.

It is important the investigation of disability/injury fraud remain separate from the responsibilities and obligations of DRS. Disability and Retirement Section should ensure the appropriate management of injury claims and the protection of employee and management rights. It is the responsibility of the Investigation Unit (IU), within the Bureau of Internal Affairs (BIA), to review injury claims separate of any other entity and determine if improprieties exist. For employees to trust management and DRS to handle claims in their best interest, there must exist a high level of trust and confidence. The more DRS becomes involved in injury fraud, the more employees will believe their focus is solely fraud, and the less they will trust the Department to resolve their claims fairly.

Accomplishment of this goal involves a significant cultural change within the organization that addresses the ethical aspects of on-the-job injury claims, requests for disability retirements, and the management of claims by departmental administrators.

The audit team visited approximately 29 Area Commands throughout the State and interviewed Commanders, Lieutenants, Sergeants, nonuniformed supervisors, and others who had responsibilities for handling and processing injury reports. Although the disability case review process is fully outlined in Chapter 20 of the Personnel Transactions Manual (PTM), very few Commanders were familiar with the chapter or the process itself.

Of particular importance is the role and authority of Commanders, managers, and supervisors with respect to their relationship with SCIF adjusters. It is essential that departmental personnel recognize their responsibilities to provide both input and direction to SCIF adjusters consistent with sound case management. Likewise, departmental personnel should be cognizant of the SCIF adjuster's primary responsibility, which is to adjust workers' compensation claims and provide technical assistance in the interpretation of workers' compensation claims, laws, and regulations.

The audit team found much of the confusion exists because information relating to workers' compensation and disability retirement is scattered throughout numerous publications, directives, and manuals. In some cases, information is not available in writing and can only be obtained through personal contact with resource experts in DRS.

Many Area Commanders believe Field Divisions serve no real purpose in the review process. Management of workers' compensation claims seldom involves interaction at the Division level. For the most part, Area staff interact with SCIF adjusters and on occasion with DRS staff. Some Commanders viewed Division as a stumbling block in that Division sometimes intervened when the case would have been handled more efficiently by Area directly contacting DRS. Involvement in workers' compensation cases by Division Commanders and Assistant Division Commanders varies from Division to Division and normally consists of tracking and monitoring claims on an exception basis. The auditors noted that Division is involved in those cases that generate a high degree of interest.

Despite the widespread frustrations voiced by the individuals interviewed, there were a few Commanders who were able to make some headway in establishing control over workers' compensation claims. The common thread in these successes was the Commander's personal commitment and involvement in claims management. Interestingly, even the Commanders who were successful said any information they learned regarding workers' compensation had been gained through personal experience. The audit team interviewed no one who had recalled receiving any training or education from the Department with respect to this subject.

PERSONNEL AND TRAINING DIVISION RESPONSE: Overall, DRS is in agreement with the audit team's findings relating to the need for a comprehensive training program. However, despite the perception by Commanders that they had not received training

on this subject, workers' compensation training is currently presented in the following Departmental courses: Cadet; Nonuniformed Supervisory; Middle Management; Initial Clerical, Clerical In-Service and Clerical Supervisory; and Communication Supervisory.

It was pointed out that injury case management was presented in Sergeant's Supervisory training in the past, but it was deleted several years ago to expand other course hours.

Current injury case management training, while better than none, is not adequate considering the importance of the subject. The DRS believes a comprehensive initial training program Department-wide; coupled with periodic refresher training on a regional basis, reestablishment of training in the Sergeant's Academy, and an appropriate increase in course hours in existing classes; will significantly enhance the Department's ability to manage workers' compensation claims.

RECOMMENDATION #15: Personnel and Training Division develop a comprehensive initial training program on claims management with a specific focus on supervisory and management levels within the Department.

In addition, add injury case management training to the Sergeant's Academy curriculum; and increase as appropriate injury case management training being presented in existing departmental courses to enhance the ability of future supervisors and managers in managing claims.

The training program should include, but not be limited to, all pertinent information contained in this report.

RECOMMENDATION #16: Personnel and Training Division develop a "Commander's Reference Book" which would include:

- 1) comprehensive guidelines for managing workers' compensation claims and disability retirement cases, and;
- 2) information explaining the role and responsibilities of DRS, SCIF, WCAB, and PERS.

It is envisioned that the reference book would also serve as a guide and source document for the recommended workers' compensation training program discussed in Recommendation #15.

RECOMMENDATION #17: Establish a requirement that Commanders be personally involved in claims management, particularly with problem cases. If the Commander is unable to work

directly with the SCIF adjuster to manage claims he/she shall ensure that a subordinate assumes this responsibility. If the Commander elects to delegate the responsibility he/she must continue to follow-up and monitor the activities of each ongoing case.

RECOMMENDATION #18: Revise the Commanders' CHP 118C to include a critical task addressing workers' compensation claims management. To adequately evaluate Commanders on this task it will be necessary for Division Chiefs to develop a tracking system for off duty injured employees for purposes of monitoring results.

Note: The Commanders will have access to DRS computer system which will have the capability of providing an abundance of data, including claims costs (estimated and paid) sorted in virtually any desired array.

RECOMMENDATION #19: A workers' compensation refresher training course be provided on a regional basis as necessary.

FINDING #10: Departmental managers and supervisors do not understand the hearing process or the evidentiary rules applicable to WCAB hearings.

DISCUSSION: The audit team found during the interview process that there is a great deal of confusion regarding the hearing process and the rules of evidence applicable to the WCAB. Many Commanders had never been advised of a WCAB hearing, nor did they realize what their role is when called. Examples were cited wherein Commanders had been notified at the last minute to report to a WCAB hearing with no idea of their responsibilities at the hearing. Some individuals reported they were actually denied the opportunity to testify or present evidence at a WCAB hearing.

RECOMMENDATION #20: Personnel and Training Division develop WCAB guidelines for use by Commanders and their subordinate supervisors including evidentiary rules unique to the process.

FINDING #11: There is no resource person at the Division level to assist Areas and sections with technical advice and guidance on workers' compensation or disability retirements.

DISCUSSION: Under the Department's present structure, there are no resource experts available at the Division level to provide Areas and sections with technical advice and guidance. As a result, Area Commands are forced to deal directly with DRS to obtain expert advice on problem cases. As DRS has only three program administrators to provide guidance and advice to command level personnel, it is virtually impossible for them to provide adequate levels of guidance on a statewide basis.

RECOMMENDATION #21: Provide each Field Division with a resource expert to assist Area/section Commands in managing workers' compensation claims.

Recognizing the current budgetary constraints, the audit team recommends these positions be reallocated from existing positions within each Field Division.

FINDING #12 : A lack of control exists over injured employees after they are placed off duty.

DISCUSSION: A number of Commanders expressed concern that once the injured employee is off duty, they lose control over the injury case. This occurs for several reasons, including: the employee being unsure of the Department's expectations; a lack of contact with Department personnel while the employee is off duty; and the absence of a visual tracking system for injured employees, particularly in the larger offices or when the employee resides outside the Area.

Presently, policy is contained in HPM 10.3, Chapters 20 and 21, assigning responsibility of proper claims management to Commanders and assuring employees are accountable while on injury status. Recognizing the majority of injury claims are legitimate, supervisors and managers have a twofold responsibility: helping employees secure the benefits to which they are entitled, and; assuring only legitimate benefits are provided. The chapters also address: 1) the need to submit progress reports regarding an employee's injury status and progress, and; 2) the importance of periodic visits.

The Commanders' perception that there is a lack of control over off duty injured employees is based, at least in part, on their limited knowledge of existing departmental policy.

PERSONNEL AND TRAINING DIVISION RESPONSE: Disability and Retirement Section has advised the audit team that their computer system will assist Commanders in keeping track of injured employees.

RECOMMENDATION #22: Provide a memorandum outlining the Department's expectations to employees who will be off duty for an extended period of time. The memorandum should also address the Commander's concern for the employee's welfare and the benefits available.

Note: Avoid using the same basic memorandum repeatedly, or else it will become stale.

RECOMMENDATION #23: Commanders should make frequent contact with injured employees who are off duty for purposes of showing concern for their well-being. It should be clearly established that Commanders have a responsibility for maintaining contact with injured employees and, as such, they have every right to maintain an ongoing dialogue even when the employee has engaged the services of an attorney.

RECOMMENDATION #24: Personnel and Training Division incorporate in Department policy a requirement that Commands maintain a visual tracking system of off duty injured employees.

FINDING #13: Division Commanders are unable to authorize fitness for duty examinations without the approval of the Assistant Commissioner, Field.

DISCUSSION: The Division Chiefs expressed frustration over the apparent inability to obtain a fitness for duty examination. A number of examples were provided to the audit team in describing employee abuses of the system by utilizing 4800 time with a doctor's verification on an intermittent basis. These employees eventually return to work only to once again obtain authorization by their physician to utilize 4800 time at their convenience. This is very trying to Commanders when they must make a determination if the employee can actually perform the full range of duties of a STO or whether the employee should be retired. This issue appears to have been resolved with the current departmental administration. However, Division Commanders would prefer that the authority to approve fitness for duty examinations be downgraded from the Assistant Commissioner to their level.

RECOMMENDATION #25: Personnel and Training Division develop specific guidelines for approving fitness for duty examinations at Division level. These guidelines should include information relating to the distinction between fitness for duty examinations and medical evaluations arranged through SCIF.

FINDING #14: The IU within BIA continue to monitor and investigate questionable workers' compensation claims.

DISCUSSION: It was virtually unanimous in the interviews with all Field personnel that a Fraud Investigation Unit was needed within the Department.

Subsequent to the initiation of the workers' compensation audit, IU was formed within the BIA, PMPSD. The IU is presently developing policies, procedures, and philosophical guidelines on workers' compensation fraud. It is the IU's intent to work in a proactive manner to curb the abuse of the workers' compensation and retirement systems. Its evolving role and responsibilities will be further clarified as IU begins to initiate its investigative activities.

In addition to conducting fraud investigations, IU personnel will focus on training departmental managers and supervisors on how to identify and document suspected fraud; publicize the fact that injury claims are being closely reviewed and investigated as a deterrent to such conduct; and most importantly, maintain an aggressive posture toward eliminating abuse of the workers' compensation and retirement systems.

An essential ingredient in the reduction of abuse and the eventual eradication of fraud is a heightened awareness of the ethical aspects of both reporting and managing workers' compensation claims. To that end, the IU should include ethics as a component in its ongoing efforts to deter fraud and abuse of the workers' compensation system.

RECOMMENDATION #26: Personnel and Training Division, with the cooperation of the IU, prepare guidelines to distinguish fraudulent claims or abuses of the system from legitimate claims. These guidelines should also address the ethical considerations associated with both workers' compensation claim reporting and management. This information should be included in the training proposed in Recommendation #15.

FINDING #15: There is no "stop gap" training program to implement the comprehensive program proposed in Recommendation #15.

DISCUSSION: The IU was created on February 3, 1992, and began its investigative activities on May 1, 1992. In the short time the IU has been involved in disability/injury fraud, the need for the immediate training of managers and supervisors on the workers' compensation system and their role, obligations, and responsibilities have become evident.

Recognizing this training will be accomplished as proposed in Recommendation #15, an immediate need exists to present training to Division and Area Commanders on pertinent issues surrounding workers' compensation. This training would be an interim step prior to the formalized training for all managers and supervisors and would be presented jointly by DRS, SCIF, and BIA. Curriculum would consist of an overview of the workers' compensation system, the role of various governmental agencies, the obligations and responsibilities of managers and supervisors, claims adjustment, and fraud identification and investigation.

This training may duplicate portions of the formalized training proposed in Recommendation #15, but is not intended to substitute for it. This concept has been discussed with SCIF, DRS, and BIA.

RECOMMENDATION #27: Interim training be presented to Division and Area Commanders on the pertinent issues surrounding workers' compensation to serve as a "bridge" between the time this audit is released and formal training is implemented. The interim training should be presented jointly by DRS, BIA, and SCIF at Division Area Commander's Conferences during 1993.

FINDING #16: Controls are lacking over the initial medical treatment of an injured worker.

DISCUSSION: Some Commanders have established a working relationship with 24-hour medical clinics. These Commanders have ensured that the clinic is reputable and have arranged to meet with the clinic administrator to personally explain Department policies and procedures as they relate to on-the-job injury claims.

The first line supervisor's initial management of the injury claim is a critical element. Successful Commanders ensure that a first line supervisor accompanies an injured employee to a physician for purposes of evaluating an injury. Whenever possible this physician is selected by the Department. The supervisor is provided with information regarding his/her responsibilities during the initial phase of injury management to assist in discussing with the physician the Department's policy on limited duty in the event the employee cannot return to full duty immediately.

It is fully recognized that employees who have a physician specified in writing on file may elect to utilize that physician for the first evaluation of their injury. Nevertheless, if prior arrangements have been made with local medical clinics many employees are willing to utilize their services.

RECOMMENDATION #28: Personnel and Training Division establish guidelines to be followed by local Commanders on selecting reputable 24-hour medical clinics. These guidelines should be incorporated into the reference book proposed in Recommendation #16 and included as part of the training program in Recommendation #15.

FINDING #17: There are no procedures for screening physicians who provide medical evaluations.

DISCUSSION: Audit team members learned of a number of individual cases where employees were directed to physicians whose services were considered less than satisfactory. It should be noted that the information provided to the audit team was subjective, based upon the personal feelings of the individual being interviewed. Nevertheless, the perception of a substantial number of interviewees is that once a physician is "approved" for use by the State, no reliable method is in place to remove the physician from the list if his/her services deteriorate.

An additional issue, relating to services provided by physicians, is the quality and thoroughness of medical reports. The IU recently met with representatives of SCIF who agreed medical reports sometimes lack detailed information. Relative to the investigation of disability/injury fraud, it is important physicians question the employee as to physical limitations which preclude their return to employment. These limitations, once documented, serve as the basis for conducting surveillance activities and proving or disproving disability/injury fraud.

Presently, the IU is in the process of developing a standardized questionnaire which would be provided to any physician an employee visits in regards to a disability/injury claim. This questionnaire would prompt the physician to question and specify an employee's physical limitations and restrictions. The questionnaire would be maintained in the employee's injury file for later reference. The questionnaire will not only assist in conducting disability/injury fraud, but in assessing an employee's physical condition and ability to return to full and/or limited duty. This concept has been discussed with managers of the SCIF and DRS, both of whom support its usefulness and necessity.

RECOMMENDATION #29: Personnel and Training Division, establish guidelines for Commanders to include: 1) retaining a current list of approved physicians; 2) methods of reporting unsatisfactory service, and; 3) a means for removing the physician from the approved list if allegations of unsatisfactory service are justified.

FINDING #18: The process for medically evaluating employees who may be eligible for disability retirement is cumbersome, time-consuming, and expensive.

DISCUSSION: Currently, when the treating physician determines an employee's injury is permanent and stationary (unable to perform the full-range of duties of a STO) or that no permanent disability indemnity exists, a second opinion is requested by either the SCIF or injured employee. The following processes may occur:

o UNREPRESENTED EMPLOYEE (no legal representation)

When the treating physician diagnoses an unrepresented employee's injury as permanent and stationary, SCIF will request a Qualified Medical Examiner (QME) through the WCAB which is forwarded to the Industrial Medical Council (IMC). If the treating physician's opinion is that no permanent disability indemnity exists, the injured employee can request a QME through the IMC. The IMC randomly selects a three member panel from a list of qualified medical evaluators of the appropriate specialty type and within the general geographic area of the employee's residence. It is the responsibility of the injured employee to choose one of the medical evaluators from the panel and make an appointment. If the IMC does not provide the panel of names within 15 days, the employee may select any QME of his/her choice directly from the official QME list. The injured employee is examined by the QME and the QME must submit the formal medical report within 45 days.

o REPRESENTED EMPLOYEE (legal representation)

The process for represented employees is handled differently. The attorney and SCIF must seek agreement on an Agreed Medical Examiner (AME) when: there is reason to believe the injured employee has or may have a permanent impairment or limitation; or, the employee requests a formal medical evaluation after being notified that no permanent disability indemnity will be paid; or, there is a dispute about the treating physician's

determination of permanent and stationary status, ability to return to usual occupation, further medical treatment, or new and further disability; or, determining whether an injury is industrial or nonindustrial. The parties have 10 days extendible to 30 days by mutual consent to agree upon a medical evaluator. The AME need not be on the QME list. If they agree upon an AME the employer makes the appointment and notifies the employee. If the AME is not selected within the allotted time then each party selects its own QME and makes an appointment and notifies the employee. Each party is limited to one QME for each medical specialty or sub-specialty necessary to evaluate the case. In either case the injured employee is examined and each physician has 45 days to prepare and submit a formal medical evaluation.

In cases involving both represented and unrepresented employees, the Disability Evaluation Unit (DEU) will issue a Summary Rating Determination within 20 days of receipt of a properly completed request form and formal medical evaluation. When the Summary Rating Determination is issued, the parties have only 30 days after receipt of the rating to request that the DEU reconsider the rating. All requests for reconsideration must be made in writing and a copy must be given to the other party. The employer must either immediately begin payments in accordance with the rating or file an application for adjudication of claim with the WCAB. Failure to do so may result in penalties to SCIF.

The medical evaluation process becomes even more cumbersome when an employee utilizes more than one of the above approaches. For example, an employee may, prior to obtaining the services of an attorney, elect to be examined by a QME. If the employee determines the evaluation is in contradiction to what he/she is hoping for then the employee can obtain the services of an attorney. After obtaining the services of an attorney, the employee may agree to be examined by an AME and if there is a dispute regarding the AME's medical evaluation the case may be taken before the WCAB. The workers' compensation judge reviews the medical evaluations and makes a decision based on those medicals or the judge can order another examination when; the medical evaluations conflict, or the judge does not agree with the medical evaluations.

A decision will ultimately be reached, however, in the scenario described above the employee will have been evaluated on at least three separate occasions by physicians. This results in costs ranging from \$1,500 to \$2,500 for each medical evaluation. The cost will vary

depending on the number of body parts being evaluated, the extent of the medical reports, and the family history. Since there is no ceiling on the charge, we will probably see higher costs in the future. The cost of each examination is paid by the Department through the workers' compensation program. In addition, during the lengthy evaluation period, the Department cannot refill the vacant position. Such lengthy delays are not in the best interest of either the Department or the employee.

PERSONNEL AND TRAINING DIVISION RESPONSE: According to DRS, attempts have been made to establish an arbitration process and failed.

AUDIT TEAM RESPONSE: Disability and Retirement Section's response was taken into consideration, however, the audit team's position on Recommendation #30 remains unchanged.

RECOMMENDATION #30: Personnel and Training Division, with the assistance of the Office of Employee Relations (OER) and the Department's legal counsel, support legislation to modify the medical evaluation process to be patterned after the arbitration procedure currently used to resolve employee/employer relation disputes.

FINDING #19: Many off duty injuries related to the Physical Performance Program (PPP) cannot be disputed.

DISCUSSION: When the PPP was first implemented in April 1982, no incentives were included in the program. In an effort to minimize opposition to its implementation, the Department established a policy allowing injuries sustained by employees engaged in off duty fitness plans to be considered job related.

This approach, while laudable, merely served to open a new avenue for disgruntled employees to use when venting their frustrations over the PPP, which had been unpopular from its inception. By mid-1983, the program's acceptance by rank and file employees had reached an all time low. Although the vast majority of employees were passing their PPP tests, the few who had failed to make "significant and continuous progress" toward passing (the Department's litmus test for initiating adverse action) were facing termination. In response to the pending adverse action proceedings, the California Association of Highway Patrolmen (CAHP) initiated legal action against the Department on two fronts: they petitioned the Superior Court to place an injunction

prohibiting the Department from taking adverse action; and they filed an unfair labor practice with the Public Employees Relation Board, alleging the Department failed to meet and confer over changes in working conditions.

The pending lawsuit and unfair labor practice charge were ultimately withdrawn when the Department and the CAHP returned to the bargaining table and negotiated an agreement over the future of the PPP. The agreement, which became effective in January 1984, included a monetary incentive for passing the test and a number of sanctions for failure. With the newly established monetary incentive in place, it was determined that some restrictions were needed to narrow the scope of off duty PPP injuries which would be considered job related. To accomplish that objective, policy was developed to allow off duty injuries to be considered job related only if the employee was participating in an approved fitness plan. Limitations and types of approved fitness plans are described in HPM 70.9, Physical Performance Program manual.

Following the implementation of the revised PPP, with its incentives and sanctions, off duty PPP related injuries declined significantly. Today, most of the PPP related injuries are classified as "record only" and as such do not result in lost time. Nevertheless, the potential and temptation exists for employees to claim that a non-job-related off duty injury occurred as a part of their "approved fitness plan" because it is not necessary to verify the injury through independent witnesses. Commanders find themselves in the untenable position of trying to prove an injury did not occur as claimed, when in reality the employee should have a responsibility to prove the injury did in fact occur as stated.

RECOMMENDATION #31: Personnel and Training Division with the cooperation of PERS legal staff determine the legal feasibility of discontinuing off duty PPP injuries as job related. This will necessitate a change in the Unit 5 contract for STO and revisions to policy in HPM 70.9, Physical Performance Program Manual, for Sergeants and above.

FINDING #20: The continual turnover of SCIF adjusters has made it difficult to establish effective working relationships with adjusters.

DISCUSSION: The audit team learned from SCIF personnel that the adjuster classification is an entry level position from which people are either promoted or transferred into other similar classifications. As a result, it is very difficult

for SCIF to control the turnover problem. However, the audit team was assured that SCIF would make every effort to work with the Department to assure that SCIF adjusters are not moved arbitrarily.

Since becoming operational, the IU has encountered turnover problems with SCIF adjusters. As a resolution, the IU began establishing working relationships with regional SCIF managers who turnover infrequently. After developing liaison with the local manager, IU has been very successful in developing closer relationships with SCIF adjusters.

The current master agreement between DPA and SCIF contains a provision concerning change of adjusters. Every reasonable effort will be made to accommodate the needs of individual Departments relating to their caseload assignment needs and to minimize any reassignment or change of caseload. The advisory committee to the State Workers' Compensation and Safety Program (at DPA) has projects underway currently concerning evaluation of adjuster performance and replacement procedures.

It should be pointed out that the Department has enjoyed a considerable degree of success in working with the SCIF whenever complaints have arisen regarding the performance of a SCIF adjuster or the transfer of an adjuster from one location to another.

RECOMMENDATION #32: Personnel and Training Division continue to work with SCIF to assure that adjusters are performing their responsibilities satisfactorily and that they are not transferred arbitrarily.

RECOMMENDATION #33: Personnel and Training Division develop guidelines for Commanders to establish and maintain a liaison with regional SCIF managers to enhance the working relationships with SCIF adjusters and provide continuity in claims management.

FINDING #21: Injured employees are assigned an adjuster based upon the employee's residence rather than the work location.

DISCUSSION: It is SCIF's policy to assign adjusters based upon the employee's residence. Commanders have expressed a concern over this policy since it makes it difficult for them to work with SCIF adjusters, especially when they have no knowledge of the employee since he/she is not assigned to their Area.

RECOMMENDATION #34: Personnel and Training Division request SCIF modify their policy to assign SCIF adjusters based on the employee's work location rather than the employee's residence.

FINDING #22: The liberal interpretation of the law has made it difficult for the CHP to control workers' compensation abuses.

DISCUSSION: Labor Code Section 3202 requires WCAB judges to interpret workers' compensation laws liberally and in favor of the employee. This interpretation creates a dilemma for CHP management in fulfilling their responsibilities toward ensuring that abuses of the workers' compensation system are controlled in so far as it is possible.

RECOMMENDATION #35: Legislation be sponsored by the Department to amend Labor Code Section 3202 requiring WCAB judges to interpret workers' compensation laws "equitably" rather than "liberally and in favor of the employee."

FINDING #23: Disability retirements are more lucrative than service retirements.

DISCUSSION: Employees who receive disability retirements are exempted from paying income tax on the first 50 percent of their retirement pay.

This tax exemption provides disabled retirees with a considerable advantage over those employees who elect to service retire with no tax exemption whatsoever. At the present time, approximately 50 percent of the uniformed employees who receive disability retirements have reached service retirement age. Often, these claimed job related injuries are simply the result of the normal aging process, but the system allows their acceptance. Because disability retirement benefits have a considerable tax advantage, it becomes a disincentive for individuals who have reached retirement age to request a service retirement.

It is extremely costly for the Department to retire high numbers of service age employees on disability. In each case, the employee receives a full year's salary under Labor Code Section 4800 and exhausts all sick leave credits prior to the commencement of the disability retirement. The Department is then faced with the decision of leaving the position vacant for up to two years or to parallel the position at considerable expense.

In an effort to determine the feasibility of enhancing service retirements to make them more attractive to individuals who have reached service retirement age, Chief Carlson and Assistant Chief Menzmer met with Mr. Robert Walton, Assistant Executive Officer, Contract and Program Services of the PERS. Mr. Walton was asked a number of questions regarding the feasibility of increasing the cap on service retirements or removing the cap altogether.

Mr. Walton was very responsive to the Department's concerns and efforts to reduce the number of disability retirements. Following are examples of potential enhanced benefits and a brief discussion of each.

- o Increasing the maximum percentage for service retirements to 85 percent, while retaining the 75 percent maximum for those who elect to retire on a disability. In this example, an individual at age 55 with 30 years service would be eligible for the 85 percent rate.
- o The 75 percent percentage cap could be removed completely so that individuals could accumulate retirement benefits up to 100 percent. This is presently the case for miscellaneous employees.
- o Limit employees to one disability retirement per career. In this example, an employee who retires on a disability and is later reinstated would not be eligible to again retire on a disability. The employee would have two choices on returning from the first disability retirement: 1) a service retirement, or; 2) retire on a disability but at the rate received on the first disability. Mr. Walton indicated this may be possible, however, it may not be applicable to individuals who are currently back on duty after having been retired once on a disability retirement.

Mr. Walton asked the PERS legal staff to research and provide an opinion regarding the feasibility of enhancing service retirements. His staff believes any enhancements to service retirements without a corresponding improvement to disability retirements would raise serious discrimination concerns. Their opinion is based upon the Rehabilitation Act and the Americans with Disabilities Act, which together prohibit discrimination against certain persons with disabilities in all aspects of employment, including fringe and ancillary benefits.

On a final note, Senate Bill 1193 introduced by Cecil Green would have raised the cap on CHP retirements from 75 percent to 80 percent of final compensation. The bill failed passage in the Senate Appropriations Committee.

RECOMMENDATION #36: The Department's legal counsel further research the issue of enhancing service retirements to confirm or rebut PERS legal opinion that it is not feasible.

FINDING #24: Uniformed employees are eligible to receive disability retirement from a job related injury at a minimum of 50 percent of their salary and be employed full-time outside PERS.

DISCUSSION: There are no statutory provisions which applies an earnings test or an earnings offset for those disability retirees (industrial disability) who seek employment outside of PERS. As a result, a considerable number of retired CHP officers who are capable of performing full-time work are employed outside of PERS and continue to receive full disability retirement benefits. Thus, the system encourages these retirees to seek full-time employment outside PERS. With no incentive for employees to seek employment within PERS it is difficult, if not impossible, for the Department to reduce the disproportionate number of disability retirements.

Disability and Retirement Section advised the audit team that there is a provision for an earning tests on ordinary disability retirements (non-industrial) in Government Section 21300 which states "If, prior to attaining the minimum age for voluntary retirement for service applicable to members of his or her class, a recipient of a disability retirement allowance other than one for industrial disability engages in a gainful occupation not in state service, the board shall reduce his or her monthly disability retirement pension to an amount which, when added to the compensation earned monthly by him or her, shall not exceed the amount of the maximum compensation earnable by a person holding the position which he or she held at the time of his retirement, or if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition." . . . "The recipient of a disability allowance shall furnish earnings information as requested by the board to administer this section. If the recipient fails to furnish requested information, the disability retirement pension shall be discontinued until such time as the requested information is furnished. If the requested information is furnished, the disability retirement pension

shall be reinstated. When he or she reaches the minimum age for voluntary retirement for service applicable to members of his or her class his or her retirement allowance shall be made equal to the amount it would be if not reduced under this section, and shall not again be modified for any cause." According to DRS, a similar law pertaining to industrial disability retirements was removed over 30 years ago.

RECOMMENDATION #37: Propose legislation (similar to Government Section 21300) to establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement for uniformed employees.

Note: Recommendation #4 and #5 addresses rehabilitating employees in other State job classification within PERS.

FINDING #25: The Department normally takes no position on workers' compensation legislation.

DISCUSSION: The Department defers analysis of workers' compensation reform legislation to the Department of Industrial Relations (DIR).

Concern over the rising costs of workers' compensation in California is certainly not limited to the CHP. This issue is a major concern to employers, both public and private, throughout the State. Several bills are currently under consideration to combat excessive workers' compensation costs. Active in supporting these bills is the California Manufacturers' Association (CMA) working in concert with the California Chamber of Commerce, and Californians for Compensation Reform (CCR), a broad-based coalition of employer groups. Their primary concern is to reduce workers' compensation costs for private industry within the State. Many of these bills would also benefit this Department if enacted.

The audit team met with Ms. Diana Henderson, manager of the Workers' Compensation Unit (WCU) within Hunt-Wesson, Incorporated. Ms. Henderson established a workers' compensation management plan for Hunt-Wesson, Incorporated following an audit revealing potential savings if they were to manage and adjust their own claims. Their WCU is comprised of four Claims Examiners whose current workload consists of approximately 137 cases. Hunt-Wesson, Incorporated has nine plants located throughout California.

Ms. Henderson is also involved heavily with the CMA, CCR, and the California Chamber of Commerce in supporting legislation to reduce workers' compensation costs for private industry. She has offered us assistance in our efforts to secure legislation to reduce workers' compensation costs within our Department. The president of the CMA is Mr. Bill Campbell, former California State Senator. Mr. Campbell estimates that legislation currently being supported by the CMA, if enacted, would save employers approximately two billion dollars over the next few years.

The audit team reviewed numerous active Senate and Assembly bills introduced into the legislature and believes the Department should consider supporting the following bills:

- o AB 2367, would provide that workers' compensation laws shall be liberally construed only after it is determined that an injury in the course of employment has occurred and the injury is both a specific injury and results in serious physical or bodily harm. The bill also provides that for a cumulative injury to be compensable, an employee must demonstrate by a preponderance of evidence that the injury was substantially caused by activities of employment.
- o SB 1491, is the Senate version of AB 2367 and contains almost identical language, although it does not address cumulative injuries.
- o SB 1904, would allow any disability insurer, health care service plan, health care provider, or group of medical service providers to become certified to provide managed care to injured employees and specifies the procedure for certification. Allows the self-insured employer or the insurer of an employer to contract with a certified managed care organization to provide specified medical services.
- o SB 1709, would provide that an injury classified as "first aid" only shall not require the filing of a claim form under workers' compensation.
- o SB 1531, would provide that liberal construction of workers' compensation laws for the protection of injured workers should be applied only when the injury is both a specific injury and results in serious physical bodily harm. In addition, the bill provides that in order to establish that a cumulative injury is compensable, an employee shall demonstrate by clear and convincing

evidence that the injury was substantially caused by actual activities of employment. Finally, the bill repeals the provision permitting an employee or his/her dependents, in the event of the employees death, to bring an action at law for damages against the employer for injury or death proximately caused by the employer's knowing removal or failure to install a specified safety device on a power press.

- o SB 1624, would repeal provisions of the Labor Code that established vocational rehabilitation as a mandatory workers' compensation benefit.
- o SB 1693, would require that for compensation of a psychiatric injury, the employee must prove by clear and convincing evidence that the injury is a mental disorder that causes disability or a need for medical treatment and is diagnosed pursuant to specified procedures that employment conditions were the predominant cause of the mental disorder and were sudden and extraordinary, as compared to routine employment events, and that the mental disorder was caused by employment events that were actual and objective occurrences. The bill would also provide, notwithstanding any other provision with respect to workers' compensation, that no compensation shall be paid for a psychiatric injury when the injury arises from or is aggravated by any personnel action unless the employee demonstrates that the action was not taken in good faith and was not taken in accordance with policy.

RECOMMENDATION #38: The Department take a proactive role in supporting legislation beneficial to improving management of the workers' compensation system. In addition, DPA be advised of the Department's position and lobby for their support.

FINDING #26: The Amborn decision has extended Labor Code Section 4800 benefits beyond the Section's original intent.

DISCUSSION: Labor Code Section 4800 applies to State safety class employees with the CHP, Department of Justice (DOJ), and harbor police employed by the San Francisco Port Commission. The substance of that Section is that a disability injury arising out of, and in the course of, duty shall entitle the employee to a leave of absence without loss of salary for a period not exceeding one year.

The Amborn decision, a 1971 appellate court ruling, concluded that Amborn's salaried leave was to continue beyond the date

when his temporary disability ceased except as otherwise limited to one year, thus permitting receipt of salary concurrently with permanent disability payments. This has resulted in the exploitation of the benefits in two ways: 1) officers are given an opportunity to take advantage of an injury by receiving a guaranteed one year full salary, and; 2) officers are given an unintentional means of deferring a disability retirement.

A more amenable interpretation of Section 4800 benefits would permit a salaried leave of absence to continue at, but not beyond the date when temporary disability ceases, and in no instance beyond a one year maximum. Read literally, Section 4800 (according to Amborn) provides a member of the CHP who is disabled temporarily or permanently by an industrial injury to a full year salaried leave of absence in lieu of any disability payment. The ruling ignores the date that the disabling condition became permanent and stationary, and provides for the continuation of benefits beyond the date when temporary disability ceases, with a one year cap. Under Labor Code Section 4850, other law enforcement personnel who sustain identical industrial injuries are entitled to receive a payment of salary only for the duration of the temporary disability, up to the one year maximum.

Both Section 4800 and 4850 refer to a "leave of absence . . . without loss of salary, in lieu of disability payment." A leave of absence means a temporary absence from duty with an intention to return. (County of San Mateo v. Workers Compensation Appeals Board (1982) 133 Cal.App.3d 737, 740; also McCoy v. Board of Supervisors (1931) 18 Cal.2d 193, 198.) The court in County of San Mateo noted that the phrase "leave of absence" should have the same meaning in both Section 4800 and 4850. (133 Cal.App.3d 737, 743.)

Therefore, because an officer who receives payments pursuant to Section 4800 is on a "leave of absence," his/her receipt of such payments should be understood to require the officer's ultimate return to duty. If, instead, a disability retirement is taken immediately subsequent to receipt of Section 4800 payments, reevaluation of the basis on which the payments were received should be required. This is not meant to suggest that a disability retirement cannot follow receipt of (some) Section 4800 payments, since it is possible that at the time 4800 payments commenced, the officer fully intended to return to duty. Conversely, under certain circumstances it may be possible to immediately ascertain that a return to duty is not realistic (i.e., when an officer suffers a severe and catastrophic injury, the determination can be made that

no return to duty will occur). The "leave of absence" concept simply means that when the determination is made that an officer who is receiving 4800 payments will not, or cannot, return to duty, he or she can no longer be on "leave of absence." Since the leave of absence status is a condition of the receipt of 4800 payments, when the condition is removed there should be no further basis on which to continue the payments.

The extended benefits are a factor to be considered in the Department's annual cost to fund this provision. In fiscal year 1991/92, these extended benefits totalled \$10,562,701, an increase of 48.76 percent from the 1989/90 cost of \$7,100,450.

RECOMMENDATION #39: Legislation be sponsored by the Department to align the provisions of Labor Code Section 4800 with Section 4850, which applies to all local law enforcement agencies.

NOTE: Incorporate language which refers to temporary disability only thereby accomplishing two objectives - eliminating an employee's ability to collect 4800 benefits after the injury becomes permanent and stationary, and curtailing the instances wherein officers take Section 4800 time precedent to a disability retirement. Such an amendment would require other issues to be addressed, including: (1) whether the amendment would be applicable only to the CHP personnel, or whether the changes would extend to DOJ State safety class members and to harbor police employed by the San Francisco Port Commission and; (2) whether the WCAB would determine both the causation factors and administer the eligibility benefits, or whether the WCAB continue to determine industrial causation for the injury, and the PERS board determine actual benefits eligibility.

RECOMMENDATION #40: The Department initiate steps to challenge the Amborn decision, which effectively entitles a member of the CHP who is disabled temporarily or permanently by an industrial injury to a full year's salary in lieu of disability payments.

NOTE: The challenge would be premised on the language in Sections 4800 - 4804. Section 4800 refers to the benefits availability "for a period not to exceed one year." The Amborn decision does not adequately explain why the phrase "not to exceed one year" should be read to require a full year's payment. Also, Section 4803, which addresses the circumstances when the disability continues for a period

beyond one year, states that Section 4800 "refers to temporary disability only." This Section, together with the phrase "not to exceed one year" in Section 4800, can be interpreted to mean no automatic entitlement to a full year's benefits of Section 4800 payments.

A challenge to the Amborn decision would arise if the Department discontinued Section 4800 payments to a CHP officer who was injured on duty, and who had commenced Section 4800 time, when the officer's disability ceased being temporary prior to the conclusion of the one year period.

FINDING #27: Presently, a time lag exists from the expiration of Section 4800 benefits until the disability retirement pension begins, creating a financial hardship for retiring employees.

DISCUSSION: An action taken to cease 4800 payments in anticipation of the commencement of a permanent disability retirement raises the prospect of a lag in time between the conclusion of 4800 payments and the start of disability pension payments. Recognizing that the processing of disability pension funds takes several months, an amendment to the language of Section 4800 should somehow account for the anticipated gap in time so as to ensure that the officer is not subject to a loss of income. Language in Section 4850.3 already provides for such an accommodation, and an amendment to Section 4800 could duplicate such provisions.

Specifically, Section 4850.3, states:

"A city, county, special district or harbor district which is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 may make advanced disability pension payments to any local safety officer who has qualified for benefits under Section 4850 and is approved for a disability allowance." . . . "Advanced disability pension payments shall not be considered a law. All advanced disability pension payments made by a local agency with membership in the Public Employees' Retirement System shall be reimbursed by the Public Employees' Retirement System pursuant to Section 21293.1 of the Government Code."

An amendment to Section 4800 which provides for a potential termination of payments prior to the expiration of a one year period should, therefore, also contain language recognizing that while a determination that no return to duty will occur, such payments will continue until the disability pension payments commence.

In addition, according to PERS' staff, other agencies have attempted to alleviate this problem by preparing the necessary paperwork themselves to help expedite the process. However, their efforts have not been successful and such an approach by this Department would significantly increase the workload of our personnel to perform a function that is clearly a PERS responsibility.

PERSONNEL AND TRAINING DIVISION RESPONSE: According to DRS, Recommendation #41 does not resolve the issue. They are concerned that guaranteeing salary indefinitely would lead to situations where the retirement processing would be delayed even more than is the case now. They recommend PERS provide tentative retirement benefits to the employee if they do not make a decision within a specified number of months after receiving the retirement application.

AUDIT TEAM RESPONSE: Our position remains unchanged.

RECOMMENDATION #41: Propose legislation to provide continuance of salary (to be reimbursed by PERS) from the time the injury is declared permanent and stationary until the disability retirement pension begins.

FINDING #28: The Department's full duty policy promotes disability retirements.

DISCUSSION: A significant contributing factor to the Department's exceptionally high disability retirement rate for uniformed employees is its "full duty" policy. Uniformed employees become eligible for a disability retirement based upon their inability to perform the full range of duties of a STO. This more rigorous standard was established following the enactment of Vehicle Code Section 2268.

To the audit team's knowledge, no law enforcement agency in California other than the CHP imposes such a restrictive standard on its sworn personnel for purposes of determining incapacity to perform the job.

There are three major contributing factors which influence the Department's full duty policy:

Vehicle Code Section 2268. This law was enacted in January 1984 and specifies that any member of the CHP, regardless of rank, must be capable of performing the full range of STO duties. This includes duties described in Vehicle Code Section 2400 and other critical duties that may be necessary for the preservation of life and

property. This Section precludes the assignment of any member of the CHP to a permanent limited duty position. Exceptions to the provisions of this Section are limited only to members who both sustained serious job related physical injuries and were returned to full duty with a commitment from the Commissioner made prior to January 1, 1984.

- o Nineteen Medical Standards developed by the SPB in 1978. These standards are used by examining physicians in evaluating injured employees who have applied or are being considered, for a disability retirement. This evaluation is commonly referred to as a "fitness for duty" examination. Physicians are informed that the 19 medical standards are the measurement used in determining those "other critical duties that may be necessary for the preservation of life and property" as described in Vehicle Code Section 2268.

In May 1978, the SPB undertook "The Medical Standards Project" study. This project conducted a job analysis to support and develop medical standards for a number of job classifications, including STO. The report, published in 1980, ultimately established 19 medical standards for a STO.

Dr. Steven Wyers, the SPB medical officer, is responsible for determining medical fitness for all STO applicants. Dr. Wyers informed the audit team that he does not refer to the 19 medical standards when evaluating applicants entering CHP. In other words, the Department-imposed medical standards are only used for the single purpose of determining disability on the part of uniformed CHP employees.

- o The Department's PPP. The current PPP was implemented in April 1982, and was placed into the Unit 5 Bargaining agreement in January 1984. Presently, successful completion of the PPP tests on an annual basis is a minimum job requirement for all uniformed employees appointed as STOs on or after January 1, 1984. For these individuals, examining physicians are required to render an opinion regarding the employee's ability to perform the PPP test whenever they are conducting a fitness for duty examination. It should be noted that inability to pass the PPP tests by these employees will result in an adverse action; and absent evidence that their failure is based upon a job-related injury, they will not be entitled to a disability retirement.

From its inception, the Department's full duty policy has been in conflict with Government Code Section 21022, a less stringent standard used by PERS to establish disability for all other employees. Government Code Section 21022 (as interpreted by the courts) simply establishes that "incapacitated for the performance of duty" means "the substantial inability of an individual to perform his/her usual duties." In fact, all case law prior to 1984 upheld the interpretation that an employee who could perform his/her usual duties was not eligible for disability retirement.

The most significant case with respect to disability retirements for public employees is Mansperger vs. PERS (1970) 6 Cal.App.3d 873. Mansperger was a fish and game warden working for the California Department of Fish and Game. If disabled, he would have been entitled to industrial disability retirement benefits under PERS. While on duty, Mansperger suffered injuries to his right arm while arresting a suspect. The medical evidence established that a partial disability existed because he suffered a slight limitation in full flexion of the arm. The doctor therefore imposed restrictions on heavy lifting and on carrying heavy objects. Aside from these restrictions, the evidence established that Mansperger could shoot a gun, drive a car, swim, pilot a boat, and pick up a bucket of clams.

In Mansperger, the court defined incapacity as "substantial inability to perform usual duties," finding that:

"While it is clear that petitioner's disability incapacitated him from lifting or carrying heavy objects, evidence shows that the petitioner could substantially carry out the normal duties of a fish and game warden. The necessity that a fish and game warden carry off heavy objects alone is a remote occurrence. Also, although the need for physical arrests do occur in petitioner's job they are not a common occurrence for a fish and game warden. A fish and game warden generally supervises the hunting and fishing of ordinary citizens. Petitioner testified that since his accident he was able to perform all his required duties except lifting a deer or lifting a lobster trap out of kelp."

Another significant case, particularly for the CHP, was Hosford vs. PERS (1978) 77 Cal.App.3d 834. Hosford, a CHP Sergeant assigned to the San Andreas Area, had suffered a series of injuries, some job related, which he claimed incapacitated him from performing the duties of a CHP Sergeant.

The California Court of Appeal, Third District, acknowledged that Mansperger had set forth the applicable standard of disability under the retirement law, then examined Hosford's case in terms of the duties required of the position of Sergeant. The court found:

"As the Mansperger court enunciated, Hosford is not disabled unless he is substantially unable to perform the usual duties of the job. The fact that sitting for long periods of time in a patrol car would probably bother his back does not mean that in fact he can not so sit and of course he can stop and exercise as needed."

A significant issue arising in Hosford involved the determination of a Sergeant's usual duties. In this and in others cases, both the individual and the employer offered differing versions of job descriptions or job performance standards as evidence. In Hosford's case, the State offered a document prepared by the SPB which defined the typical duties of the position of State Traffic Sergeant. Hosford offered a different document titled "Typical physical demands on the STOs and Sergeants" prepared by the CHP. Each side attempted to argue that their document represented the exclusive standard for purposes of describing the usual duties of the position. The court rejected the contentions of both parties. Instead, the court looked at the documents in light of the testimony of the applicant and other witnesses. The court, clearly impressed with the fact that neither document was particularly accurate at describing Hosford's usual duties, felt it was important to examine the duties as described by officers on the job, not the generalized statements adopted by the employer.

There is no recorded information within the CHP to establish specifically how and when these 19 medical standards began to be used by the Department to determine incapacity for disability retirement purposes. Through interviews the audit team learned that in 1980, the Department's Personnel Officer, Mr. George Adams, directed that the task statement be utilized to assist physicians in making determinations for fitness for duty examinations. Later, subsequent to the enactment of Vehicle Code Section 2268, Mr. Jim Calvert of the Department's DRS, authority General Order 10.5 "Critical Duty Capability Required of All Uniformed Members." This General Order defines the full duty requirements mandated by Vehicle Code Section 2268 and embraces the SPB STO task statement as an integral part of the full duties.

Almost immediately following the enactment of Vehicle Code Section 2268, the Department began experiencing conflicts with PERS over the definition of "incapacity to perform the duties" (as it related to uniformed employees within the CHP.) The PERS was continuing to utilize Government Code Section 21022 as their standard for determining incapacity and the Department was applying the stricter standard contained in Vehicle Code Section 2268.

In March 1984, DRS prepared an issue paper to address this conflict and make recommendations regarding a future course of action. In essence, the paper found the PERS and Department's definition of incapacity were inconsistent. Disability and Retirement Section found in surveying other California law enforcement agencies that cities and counties use the PERS definition for incapacity, which is set in the retirement law.

The issue paper developed two alternative strategies for addressing the problem and ultimately recommended that the disability retirement law be modified to eliminate the conflict between Government Code Section 21020 and Vehicle Code Section 2268. It should be noted that at the time this issue paper was developed, Vehicle Code Section 2268 and its effects had not yet been fully realized. The audit team believes the authors of the legislation did not envision the eventual impact the law would have on disability retirements.

The recommended changes to Government Code Section 21020 made by DRS in the March 1984 issue paper are underlined in the following paragraph:

As used in this part "disability" and "incapacity for performance of duty" as a basis of retirement means disability of permanent or extended and uncertain duration as determined by the Board, or in the case of a patrol member, by the appointing power employing such member or in the case of a local safety member by the governing body of the contracting agency employing such member on the basis of competent medical opinion. In the case of a patrol member's "incapacity for performance of duty" as a basis for retirement means substantial incapacity for the performance of either usual or critical duties regardless of their frequency of occurrence as determined by the appointing power employing such member.

Vehicle Code Section 2268 also contains a provision prohibiting the Department from placing employees in permanent limited duty positions. The outgrowth of this provision has resulted in policy restricting limited duty assignments to no more than six months, with extensions permitted only by approval from the appropriate Assistant Commissioner. The Department has taken a position that a number of special duty positions can be utilized by employees who are placed on a limited duty status by a physician.

There are a number of officers who could not meet the criteria for full duty capability but who are performing well in special duty positions in the Field, Headquarters, and Division offices. The Department's full duty policy prohibits these employees from continuing this employment even if the job they are performing is their usual duty. The concern of many managers within the Department is that if employees were allowed to continue in a special duty position when they are unable to perform the full duties of a STO, a precedent would be set and that eventually all (or many) of the special duty positions would be filled by individuals who are unable to perform the full range of STO duties.

Included in the DRS issue paper is a draft analysis developed by PERS legal staff. This analysis addressed the entire issue of the interpretation of Government Code Section 21020 and the court cases addressed earlier in this discussion. The PERS staff counsel also discussed the issue of light duty assignments as they might relate to an individual's "usual duties" as discussed in two cases.

In Barber vs. Retirement Board (1971), the court held that where there are permanent light duty assignments, a person should not be retired if they can perform in one of those assignments. This principle was reiterated in Craver vs. City of Los Angeles (1974). Even as these two decisions arose within the City of Los Angeles, the court in Craver agreed with Barber and recognized that:

"...where there are permanent light duty assignments that person should not be retired if he can perform duties in a given permanent assignment within the Department. He need not be able to perform any and all duties performed by Fireman or in the instant case policeman. Public policy supports employment and utilization of the handicapped. If a person can be employed in such an assignment he should not be retired with payment of disability retirement pension."

The PERS legal counsel acknowledged that employers were becoming increasingly reluctant to classify an assignment as light duty. Such a designation may pose personnel problems by creating the perception that some employees in the same classification are performing "lesser" duties than others. For employee relations and budgetary purposes, public agencies are reluctant to formally recognize that some of their employees are performing light duty. This is particularly true of the CHP.

The issue then is: when "does" or "can" a limited duty assignment become a person's usual duties when evaluating the person for a disability retirement? Clearly, when an employee is placed in a special duty assignment because of an inability to perform the full range of duties of a STO, the assignment would be considered one of limited duty; however, when an employee performing in a special duty position is later discovered to be unable to perform the full range of duties of a STO, the argument could be made that the employee is not performing a limited duty assignment but merely performing the usual duties of the position.

An example is found in an early 1980s administrative hearing involving a correctional officer. Consider the following facts as stated by the hearing officer:

The officer in question was 58 years old suffering from a variety of physical ailments, including hypertension and a bad back. The officer requested disability retirement on the basis of his inability to perform the full range of duties of a correctional officer which included frequent emotional and physical contact with prisoners, some heavy lifting, and a variety of physical duties. However, during the last four years of employment the officer had been assigned as a timekeeper. This was a normal duty of correctional officers, not a "light duty" assignment. Normally, the assignment would have been rotated yearly but in this case, the institution had left the officer in the same assignment because he was good at it and enjoyed the work.

Under the public employees retirement law, the determination of disability must be made on the basis of the members "usual" duties. Because of the lengthy nature of the assignment and the fact there was no apparent plan to reassign the officer, it would be reasonable to argue that his "usual duties" were those of a timekeeper and his disability should be judged on that basis.

With modifications to the current laws addressing disabilities in Government Code Section 21020 and Vehicle Code Section 2268, the argument previously discussed could be made for all administrative positions within the CHP and, in particular, the managerial ranks from Lieutenant through Deputy Chief.

The effects of Vehicle Code Section 2268 have reached far beyond what was anticipated at the time the law was enacted. The law was originally intended to set uniform physical standards for all uniformed employees and provide an exemption for a single severely injured employee from the requirements of the PPP tests. However, the law has instead provided an avenue for many employees to obtain a disability retirement when they are in fact capable of performing their "usual" duties.

Moreover, the 19 medical standards developed by the SPB in 1978 have never been used to evaluate STO applicants, but instead have been imposed as standards only for individuals seeking a disability retirement. The ultimate result are standards which are not measurable, imposed on retirement age employees whose health has deteriorated as a part of the normal aging process. Yet these standards are not applied to younger individuals who are attempting to gain employment with the CHP.

It is the opinion of this audit team that the Department should discontinue the use of the 19 standards contained in the 1980 SPB medical standards project report as criteria for determining eligibility for disability retirements. These standards should no longer be used for the following reasons.

- o The medical standards have never been validated and are not a measurable predictor of a STO's ability to continue performance of his or her usual duties.
- o It is discriminatory to utilize medical standards in the determination of a person's capacity to perform the job for retirement purposes when these same standards have never been applied to individuals seeking employment with the CHP.
- o The Department's PPP, which was developed utilizing a scientific study design, contains tests and work tasks that have been validated and are measurable. It is inconsistent to utilize two different sets of standards in evaluating employees for determining disability. The PPP tests should continue as minimum physical standards for employees who were first appointed as STOs on or after January 1, 1984.

RECOMMENDATION #42: Personnel and Training Division, with assistance from the Department's legal counsel and OER, develop a proposal to legislatively redefine "incapacitation for continued employment" in Vehicle Code Section 2268 to parallel the standard PERS uses to determine "incapacity" for local law enforcement agencies. That standard is interpreted to mean "the substantial inability of an individual to perform his/her usual duties."

NOTE: The proposal needs to address the potential impact of the Americans with Disabilities Act.

Consider the following in developing the proposal:

- o Legislation to return the definition of "incapacitation for continued employment" to the pre-Vehicle Code Section 2268 standard. Amend California Vehicle Code (CVC) Section 2268(a) as follows (changes underlined):
 - (a) 2268 CVC. Any member of the CHP as specified in Section 2250 shall be capable of performing the usual or critical duties of his classification regardless of the frequency of occurrence as determined by the appointing power.
 - (b) Subdivision (a) does not apply to any member of the CHP who after sustaining serious job related physical injuries returned to duty with the CHP and who received written commitment from the appointing power allowing their continued employment as a member of the CHP. This subdivision applies only to commitments made prior to January 1, 1984.
 - (c) Nothing in subdivision (a) entitles a member of the CHP to, or precludes a member from receiving an industrial disability retirement.

PERSONNEL AND TRAINING DIVISION RESPONSE: Disability and Retirement Section opposes the elimination of the 19 medical standards because the task statement provides a valuable yardstick for determining an employee's ability to perform essential duties. Absent the 19 medical standards, only the SPB specification sheet would be available for physicians to review.

The physical demands component of the specification sheet provides very little insight into the physical nature of the job. Therefore the exclusive use of that information in disability evaluations would present many conflicts in medical opinions.

The audit team was informed that a job analysis of the STO's current duties is in the initial development phase. When completed, it is anticipated the 19 medical standards will be replaced through the validation of the physical demands survey component of the job analysis. The DRS believes the existing 19 medical standards should continue to be used until replaced.

In a follow-up meeting with DRS, it was learned they disagree with the audit team's finding that utilizing the 19 medical standards as yardstick for determining disability, but not for entry level applicants, is discriminatory. It is the opinion of the DRS Commander that the 19 medical standards are skill/physical abilities gained through training at the Academy.

AUDIT TEAM RESPONSE: The concern raised by DRS regarding the value of the current 19 medical standards as a yardstick in determining employee's ability to perform essential duties is acknowledged by the audit team. The forthcoming job analysis, when validated, will be a meaningful tool for evaluating a STO's ability to perform essential duties. However, the concerns expressed in the audit report relative to the existing 19 medical standards are still present: 1) the standards have never been validated and are not measurable; 2) they are discriminatory to use for determining disability when not used at entry level, and; 3) it is inconsistent to use two standards (PPP and the 19 medical standards).

The audit team disagrees with the DRS opinion that the 19 medical standards are skills/physical abilities gained through Academy training. The tasks, as written, represent a minimum standard of ability, not a skill or technique gained through training.

RECOMMENDATION #43: Eliminate the 19 medical standards and when the new physical demands survey is completed and validated, utilize those standards to evaluate employees for disability retirement.

FINDING #29: A number of uniformed employees mandatorily reinstate to obtain a second disability retirement at a higher allowance.

DISCUSSION: A perception exists within the Department that a growing number of uniformed employees are being mandatorily reinstated from disability retirement for a brief period and then obtaining a second disability retirement to increase their disability retirement allowance. A review of all

uniformed employees who were reinstated during the period 1986 through April 1992 was conducted to determine the accuracy of this perception. The results of the review are inconclusive based on the available data. Accordingly, the perception can neither be confirmed or refuted.

As discussed previously in this report, until DRS functions are computerized, it is not possible to efficiently track reinstatements and retirements. Therefore, this review was necessarily limited to only those employees who have been reinstated since 1986 with one exception, an employee who was reinstated for a second time in 1984 and is now attempting to obtain a third disability retirement.

During the review period (1986 through April 1992), a total of 96 uniformed employees were reinstated. Of the 96, ten were permissive reinstatements. Eighty-three of the 96 individuals who were reinstated are currently on duty. Of those who are no longer employed by the Department, one resigned, six received disability retirements, and five are pending disability retirements.

In examining the 11 individuals who have retired, the following facts were revealed:

- o One employee is retired for the third time and another is pending a third retirement.
- o Five employees have retired twice and four employees are pending their second retirement.
- o Intervals between the initial appointment and first disability retirement ranged between three years one month to 28 years. The average interval was ten years six months. Intervals between the first reinstatement and second retirement ranged between one hour to 14 years five months. The average interval was four years four months.
- o Intervals between the second reinstatement and third retirement were three years 11 months, and eight years. The average between these two individuals is six years.

Attached (Exhibit C) is a schedule depicting reinstatements during the period 1986 through April 1992, indicating the total number of reinstatements, a breakdown of mandatory and permissive reinstatements, and the current status of these individuals according to the year in which they were reinstated. The current status includes employees who are on

duty, retired, resigned, or pending retirement. The results of this review do not reveal any particular trend in reinstatements and subsequent disability retirements. However, it should be noted that of the individuals reinstated in 1986 (the first year data could be found), there are a larger percentage who have retired again.

As mentioned previously, this information was extremely difficult for the audit team to obtain and required hand tallying, extensive review of personnel files and contacting Commanders of the affected employees in order to obtain accurate and up-to-date information. Without computerization it is virtually impossible to track this data for purposes of analyzing trends, identifying problems and proposing solutions.

PERSONNEL AND TRAINING DIVISION RESPONSE: The audit team was advised that the ability to track retirements has been planned into the electronic database.

RECOMMENDATION #44: Personnel and Training Division ensure that DRS includes in its computer program the capability to track disability retirements and their relationship to mandatory reinstatements and subsequent retirements.

RECOMMENDATION #45: Evaluate mandatory reinstatement requests more thoroughly to include IU in the review process to identify potential improprieties early and assure appropriate investigative steps are pursued.

FINDING #30: The different parties (CHP, DPA, SCIF, PERS, and WCAB) involved in handling workers' compensation or disability retirement cases do not meet to exchange ideas or discuss conflicts.

DISCUSSION: The audit team found that the workers' compensation system, as it impacts the Department, could be more efficiently managed if ongoing and periodic communication could be established between the Department and the various entities administering the system. For example, in a meeting with high level officials at PERS, it was discovered they could not understand the Department's concern over the high percentage of disability retirements awarded to employees who had reached service retirement age. From their perspective, this is not an issue as these individuals are eligible for a service retirement and the pension would not impact the amount of money expended. They had not considered the cost of the Department paralleling, or leaving a position vacant until all credits are exhausted (4800 time and sick leave).

While it is critical for Commanders and supervisors to maintain communication with local SCIF adjusters, it is also important that high-level representatives from SCIF and our Department communicate on a regular basis. Presently, this communication is limited to DRS staff, and occasionally, at the Division Chief level. The DPA, which has overall responsibility for managing the workers' compensation master agreement with the SCIF, is also a critical player in the communication process. Finally, there has historically been very little communication between the Department and WCAB. A critical need exists to improve the relationship between the Department's upper management and high-level officials within the WCAB.

In the audit team's opinion, establishing a workers' compensation committee to share information of mutual interest and gain an understanding of the roles and responsibilities of each component within the workers' compensation system would benefit all interested parties.

RECOMMENDATION #46: Personnel and Training Division initiate steps to form a workers' compensation committee comprised of Division Chief level representatives from the CHP and equivalent level executives from PERS, SCIF, DPA, Division of Workers' Compensation, and WCAB. California Highway Patrol representatives should include the P&TD Chief and Assistant Chief commanding the BIA.

Note: The WCAB may decline participation because of its role in deciding workers' compensation issues.

FINDING #31: No procedure exists within the Department to monitor and audit SCIF billings submitted for payment.

DISCUSSION: Based on our interviews with the Department's Accounting Section, the audit team was advised that no procedures exist to verify the accuracy of SCIF's billings. Accounting Section basically recalculates the cover sheet of the statement and submits the bill for payment. The audit team requested the Department's fiscal auditors review the medical and vocational rehabilitation costs (claims) submitted by SCIF to determine if the claims paid are appropriate and justified. The auditors randomly reviewed open cases of individual CHP injury claim files paid by five SCIF offices: Sacramento; Oakland; Redding; Santa Rosa; and Monterey Park.

The auditors examined source documents (vendor invoices, travel expense claims, mileage, etc.) for medical, vocational

RECOMMENDATION #47: The Department's fiscal auditors are currently reviewing a random sample of medical bills submitted for payment. If it is determined medical bills are appropriate and justified, no further action need be taken.

If, however, it is determined that medical bills are being paid for either services not rendered or the fees charged exceed the relative value scale, it is recommended that P&TD explore the feasibility of employing a third party administrator for purposes of auditing medical bills. The services of third party administrators can be obtained at a fee based on a percentage of the savings realized.

RETIREMENTS (CHP MEMBERS)
1978 through 1991

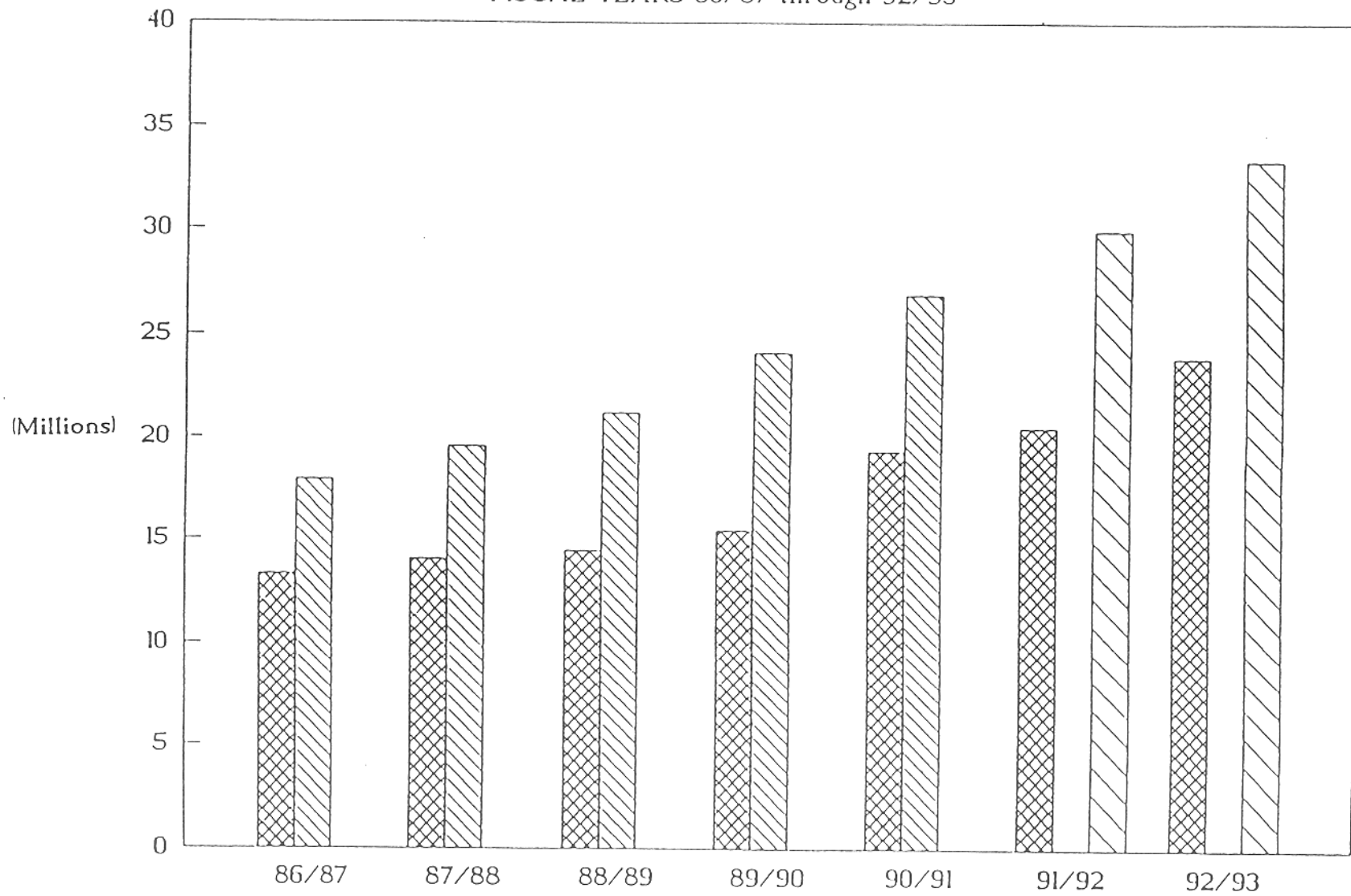
	1978	%	1979	%	1980	%	1981	%	1982	%	1983	%	1984	%
DISABILITY	89	57%	114	69%	118	72%	151	74%	167	76%	150	80%	113	70%
SERVICE	67	43%	52	31%	45	28%	54	26%	52	24%	38	20%	48	30%
	156		166		163		205		219		188		161	




	1985	%	1986	%	1987	%	1988	%	1989	%	1990	%	1991	%
DISABILITY	111	78%	121	70%	109	75%	140	73%	143	82%	112	82%	119	63%
SERVICE	32	22%	51	30%	36	25%	51	27%	31	18%	24	18%	71	37%
	143		172		145		191		174		136		190	

% - Percentage of total retirements

WORKERS' COMPENSATION COSTS

FISCAL YEARS 86/87 through 92/93



 BUDGET ALLOTMENT  ACTUAL EXPENDITURES  PROJECTED EXPENDIT.

REINSTATEMENTS
1986 - APRIL 1992

	*							**	
	1984	1986	1987	1988	1989	1990	1991	1992	TOTAL
MANDATORY	1	11	9	19	16	12	13	5	86
PERMISSIVE	0	0	1	0	2	4	0	3	10
TOTAL	1	11	10	19	18	16	13	8	96

CURRENT STATUS

	1984	1986	1987	1988	1989	1990	1991	1992	TOTAL
ON-DUTY	0	5	9	17	17	16	12	7	83
RETIRED	0	3 ***	1	2 ***	1	0	0	0	7
RESIGNED	0	1	0	0	0	0	0	0	1
PENDING RETIREMENT	1	2	0	0	0	0	1	1	5

* One 1984 retirement tracked.

** Through 4-27-92.

*** One employee retired twice (1986 and 1988).

STATUS OF RECOMMENDATIONS FROM THE 1992 CHP REPORT ON WORKERS' COMPENSATION

The 1992 Workers' Compensation Program evaluation resulted in 48 recommendations for improvements in the workers' compensation system (see Annex B for a copy of 1992 report). The 1992 recommendations are reproduced in the table below.

As part of the 2004 review of the Department's workers' compensation system, the CHP's Internal Affairs Section, Disability and Retirement Section, and the Office of Special Representative gathered information* about the current status of each 1992 recommendation and included it in the table below. As shown in the table, a number of recommendations were implemented in their entirety while others were abandoned due to legislative, political, or other factors outside the control of the Department. Other recommendations appear to have received little consideration or were withdrawn due to decisions by CHP's Executive Management. To the extent a recommendation is still viable and may result in improvements, it is incorporated into the 2004 recommendations and/or action steps. The status, "OPEN" indicates that the Department believes that additional work is necessary related to that recommendation. "CLOSED" indicates that no additional work is believed necessary.

**As a starting point, staff used a compliance review report completed in December 1995.*

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
1. Create an additional AGPA position to serve as the fourth program coordinator in Disability and Retirement Section (DRS).	CLOSED - Recommendation fully implemented.
2. Create an additional half-time clerical position in DRS.	OPEN - Position was filled in 1994 but lost due to state mandated budget cuts in 2002.
3. Create a rehabilitation specialist position in DRS to coordinate and safeguard the Department's interests.	CLOSED - Position created and filled as noted in Recommendation #1. Position continues to be filled.

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
4. Employees in all remaining bargaining units represented within the Department; and non-represented employees be included in Government Code Section 19876.5 and Labor Code Section 139.5.	CLOSED - 1994 legislation eased the concerns prompting this recommendation and DPA was no longer interested in this approach (as of 11/95). Recommendation withdrawn.
5. Evaluate the feasibility of administering rehabilitation programs internally within state service, rather than contracting for such services for those employees not qualifying under Government Code Section 19876.5 and Labor Code Section 139.5.	CLOSED - Recommendation not implemented. The Department of Personnel Administration reviewed the 1992 proposal and advised that administration could not be split between the State Compensation Insurance Fund and the Department. The employee benefit of vocational rehabilitation was subsequently eliminated, rendering this recommendation moot.
6. Propose legislation to amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to rehabilitation services.	<p>OPEN - To date no legislation has been enacted addressing this specific recommendation.</p> <p><i>2004 Recommendation: Amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury/disability.</i></p>
7. Place high priority on installing computer equipment in DRS.	<p>OPEN - Recommendation implemented and DRS provided computers in 1995. The Health and Safety Section database was added in 1995 and DRS continues to use this database.</p> <p><i>2004 Recommendation: Further upgrades of the database are</i></p>

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
	<i>necessary as this system is nearly ten years old and will not meet the future demands of the Workers' Compensation Fraud Unit.</i>
8. Command Management Plan strategies be developed by DRS pertinent to improving services. Particular emphasis should be directed toward interaction with management and supervisory levels throughout the Department. This interaction should include, but not be limited to: legal updates, current trends, reporting requirements, and overall issues relating to claims management.	<p>OPEN - The 1994 status report indicated that the strategies identified in this recommendation would be included in the 1994 CMP. However, a review of the 1994 CMP and the CMPs in 2003 and 2004 revealed that claims management strategies were not included.</p> <p><i>2004 Action Taken: WC case management strategies will be included in 2005 Strategic Plan.</i></p>
9. The participation of personnel within DRS should be solicited and considered in the development of CMP strategies.	CLOSED - Recommendation fully implemented.
10. Performance appraisals be completed annually by DRS commander as required and address the tasks associated with the Section's mission.	CLOSED - Recommendation fully implemented.
11. Disability and Retirement Section meetings should be scheduled on a periodic and regular basis following P&TD commander's meetings, to disseminate information emanating from Top Management and to discuss decisions made in managing cases.	CLOSED - Recommendation initially implemented in 1993. Ongoing compliance based upon related subject matter from Top Management.
12. Personnel and Training Division develop decision-making	CLOSED - Recommendation fully implemented.

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
guidelines for monetary settlements, with specific limits and decision levels approved by Executive Management.	
13. Establish a process for recommending compromise and release (C&R) denials similar to existing DRS practice of analyzing and presenting Executive Management with recommendations to approve C&R settlements that are above DRS monetary approval level.	CLOSED - Recommendation fully implemented (as part of Recommendation #12, above).
14. Budget Section and DRS review the feasibility of setting aside funds for C&R settlements taking into consideration the availability of funds.	CLOSED – Recommendation denied by the Department of Finance.
<p>15. Personnel and Training Division develop a comprehensive initial training program on claims management with a specific focus on supervisory and management levels within the department. In addition, add injury case management training to the sergeant's academy curriculum; and increase as appropriate injury case management training being presented in existing departmental courses to enhance the ability of future supervisors and managers in managing claims.</p> <p>The training program should include but not be limited to all pertinent information contained in this report.</p>	<p>OPEN - Recommendation initially implemented, i.e., DRS provided initial injury case management training to all supervisors and managers in 1994. DRS coordinated with SCIF to repeat this training for all supervisors and managers in 1997/1998. Additionally, DRS provides instruction on injury case management at first line supervisors' and middle managers' training.</p> <p><i>2004 Action Taken: DRS, SCIF, and the Workers' Compensation Fraud Unit (WCFU) will provide expanded training on case management and fraud prevention for supervisors and managers. The WCFU has already provided fraud prevention training at the October 2004 first line supervisors' course.</i></p>

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
<p>16. Personnel and training division develop a "Commander's Reference Book" which would include:</p> <ol style="list-style-type: none"> 1) Comprehensive guidelines for managing workers' compensation claims and disability retirement cases, and; 2) Information explaining the role and responsibilities of DRS, SCIF, WCAB, and PERS. <p>It is envisioned that the reference book would also serve as a guide and source document for the recommended workers' compensation training program discussed in Recommendation #15.</p>	<p>CLOSED - Recommendation fully implemented (see policy contained in HPM 10.7).</p>
<p>17. Establish a requirement that commanders be personally involved in claims management, particularly with problem cases. If the commander is unable to work directly with the SCIF adjuster to manage claims he/she shall ensure that a subordinate assumes this responsibility. If the commander elects to delegate this responsibility he/she must continue to follow-up and monitor the activities of each ongoing case.</p>	<p>CLOSED - This recommendation was incorporated into departmental policy in 1993 and was included in the DRS case management training program in 1994. HPM 10.7, Chapter 2, Case Management, now requires personal involvement by commanders.</p>
<p>18. Revise the commanders' CHP 118C to include a critical task addressing workers' compensation claims management. To adequately evaluate commanders on this task it will be necessary for division chiefs to develop a tracking system for off duty</p>	<p>OPEN - Recommendation not implemented since the current CHP 118C, Performance Appraisal – Commander, does not include this specific critical task.</p>

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
injured employees for purposes of monitoring results.	
19. A worker's compensation refresher training course be provided on a regional basis if necessary.	<p>OPEN - Recommendation initially implemented, i.e., a refresher course was presented to all supervisors and managers in 1997/1998 (see discussion for Recommendation #15). Also, DRS began providing information on significant cases at Division and Area Commanders Conferences (DACC) in 1995. This program was suspended approximately four years ago due to budgetary limitations on travel expenses.</p> <p><i>2004 Action Taken: DRS personnel will begin attending DACCs in 2005 to present information on significant cases.</i></p>
20. Personnel and Training Division develop WCAB guidelines for use by commanders and their subordinate supervisors including evidentiary rules unique to the process.	CLOSED - Recommendation fully implemented (see policy contained in HPM 10.7).
<p>21. Provide each field division with a resource expert to assist Area/Section commands in managing workers' compensation claims.</p> <p>Recognizing the current budgetary constraints, the audit team recommends these positions be reallocated from existing positions within each field division.</p>	CLOSED - Recommendation fully implemented (see policy contained in HPM 10.7).
22. Provide a memorandum outlining the Department's	CLOSED - Recommendation fully implemented in 1993 and

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
expectations to employees who will be off duty for an extended period of time. The memorandum should also address the Commander's concern for the employee's welfare and the benefits available.	included in the DRS case management training program in 1994. HPM 10.7, Chapter 2, Case Management, and Chapter 5, Documentation, now require that commanders send a memorandum in accordance with this recommendation. A sample memorandum is included as Annex P-15 in HPM 10.7.
23. Commander should make frequent contact with injured employees who are off duty for purposes of showing concern for their well-being. It should be clearly established that Commanders have a responsibility for maintaining contact with injured employees and, as such, they have every right to maintain an ongoing dialogue even when the employee has engaged the services of an attorney.	CLOSED - Recommendation fully implemented in 1993 and included in the DRS case management training program in 1994. HPM 10.7, Chapter 2, Case Management, now requires contact with injured employees as described in this recommendation.
24. Personnel and Training Division incorporate in Department policy a requirement that Commands maintain a visual tracking system of off duty injured employees.	<p>OPEN - Recommendation fully implemented in 1993 and included in the DRS case management training program in 1994. HPM 10.7, Chapter 2, Case Management, now requires that commanders maintain a CHP121D (Injury/Illness Status Report) for all employees who are assigned to limited duty or are off duty as a result of an industrial injury or illness.</p> <p><i>2004 Recommendation: A new reporting system and policy should be developed to require negative CHP 121D reports and include WCFU review of suspicious activities.</i></p>
25. Personnel and Training Division develop specific guidelines	CLOSED - Recommendation fully implemented in 1993 and

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
for approving fitness for duty examinations at Division level. These guidelines should include information relating to the distinction between fitness for duty examinations and medical evaluations arranged through SCIF.	<p>included in the DRS case management training program in 1994. HPM 10.7, Chapter 7, Department-Ordered Fitness-For-Duty Examination and State Compensation Insurance Fund-Ordered Medical Examination, provides explicit instructions regarding fitness-for-duty examinations and clarifies the procedural differences between departmental-ordered examinations and SCIF-ordered medical examinations.</p> <p>It should be noted that HPM 10.7 requires that departmental examinations be approved by the appropriate Assistant Commissioner rather than at the Division level.</p>
26. Investigation Unit, assisted by P&TD, develop guidelines to distinguish fraudulent claims or abuses of the system from legitimate claims. These guidelines should also address the ethical considerations associated with both Workers' Compensation claim <u>reporting</u> and <u>management</u> . This information should be included in the training proposed in Recommendation #15 <i>[from 1992]</i> .	<p>OPEN - Recommendation fully implemented in 1993 and included in the DRS case management training program in 1994. HPM 10.7, Case Management, provides a cursory discussion about workers' compensation fraud and/or abuse and directs commanders to notify Internal Affairs Section if fraud is suspected. Annex A-1 in HPM 10.7 contains a list of potential fraud indicators.</p> <p>It should be noted that HPM 10.7 does not specifically address ethical considerations associated with claim reporting and management as proposed in the recommendation.</p> <p><i>2004 Action Taken: WCFU will be established to coordinate with DRS for fraud prevention training, reporting of suspected fraudulent claims, investigations, etc.</i></p>

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
27. Interim training be presented to Division and Area Commanders on the pertinent issues surrounding Workers' Compensation to serve as a "bridge" between the time this audit is released and formal training is implemented. The interim training should be presented jointly by DRS, BIA, and SCIF at Division Area Commander's Conferences during 1993.	<p>OPEN - The interim training proposed in this recommendation was not provided. Rather, Division and Area Commanders received the initial injury case management training provided by DRS in 1994 (see above discussion on Recommendation #15).</p> <p><i>2004 Action Taken: DRS will provide training to command staff responsible for case management.</i></p>
28. Personnel and Training Division establish guidelines to be followed by local commanders on selecting reputable 24-hour medical clinics. These guidelines should be incorporated into the reference book proposed in Recommendation #16 and included as part of the training program in Recommendation #15 [from 1992].	CLOSED - Recommendation fully implemented (see policy contained in HPM 10.7).
29. Personnel and Training Division establish guidelines for commanders to include: 1) retaining a current list of approved physicians; 2) methods of reporting unsatisfactory service, and 3) a means for removing the physician from the approved list if allegations of unsatisfactory service are justified.	CLOSED - Recommendation fully implemented (see policy contained in HPM 10.7).
30. Personnel and Training Division, with the assistance of the Office of Employee Relations (OER) and the Department's General Counsel, support legislation to modify the medical evaluation process to be patterned after the arbitration procedure	OPEN - To date no legislation has been enacted addressing this specific recommendation.

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
currently used to resolve employee/employer relation disputes.	
31. Personnel and Training Division with the cooperation of PERS legal staff determine the legal feasibility of discontinuing off duty PPP injuries as job related. This will necessitate a change in the Unit 5 contract for STO and revisions to policy in HPM 70.9, Physical Performance Manual, for Sergeants and above.	<p>OPEN - It is unknown whether the Department explored legislative and/or Unit 5 contractual changes to immunize the Department from claims for off duty injuries related to the PPP. However, this recommendation was apparently the subject of discussions and negotiations between the Department and the CAHP from 1993 through early 1995. As part of the 1995 Memorandum of Understanding between the Department and the CAHP, the PPP was abolished.</p> <p><i>2004 Recommendation: The issue of providing incentives for physical fitness while limiting exposure from off duty injuries should be revisited because of the newfound sense of urgency to reform the WC system.</i></p>
32. Personnel and Training Division continue to work with SCIF to assure that adjusters are performing their responsibilities satisfactorily and that they are not transferred arbitrarily.	CLOSED - Recommendation fully implemented and compliance is ongoing based upon responsibilities contained in the master agreement between the State Compensation Insurance Fund and the Department of Personnel Administration.
33. Personnel and Training Division develop guidelines for commanders to maintain a liaison with regional SCIF managers to enhance the working relationships with SCIF adjusters and provide continuity in claims management.	CLOSED - Recommendation fully implemented (see policy contained in HPM 10.7).
34. Personnel and Training Division request SCIF modify their	CLOSED - Recommendation fully implemented and

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
policy to assign SCIF adjusters based on the employee's work location rather than the employee's residence.	compliance is ongoing based upon responsibilities contained in the master agreement between the State Compensation Insurance Fund and the Department of Personnel Administration. SCIF claim assignment may be altered based upon departmental request and the consolidation of SCIF offices.
35. Legislation be sponsored by the Department to amend Labor Code Section 3202 requiring WCAB judges to interpret workers' compensation laws "equitably" rather than "liberally and in favor of the employee."	CLOSED – Workers compensation reform legislation effective 2004 enacted this change.
36. The Department's legal counsel further research the issue of enhancing service retirements to confirm or rebut PERS legal opinion that it is not feasible.	<p>OPEN - This recommendation was implemented in 1993 after the issue of enhanced service retirements was studied by the Department's General Counsel and DRS. Although the General Counsel determined that a proper enhanced service retirement program could withstand a discrimination challenge, DRS determined that the Department would incur considerable expense to offset the tax advantages provided by a disability retirement. Given the expense and lack of assurance regarding the outcome of such a program, it was determined that an enhanced service retirement was impracticable. No further action has been taken.</p> <p><i>2004 Recommendation: The issue of an enhanced service retirement should be re-visited as a means of reducing IDRs.</i></p>
37. Propose legislation (similar to Government Section 21300) [currently Section 21342 due to code realignment] to establish	OPEN - This proposal was determined to possibly involve collective bargaining in addition to legislative changes and DPA was not interested in pursuing this mandatory approach in

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement for uniformed employees.	November 1995. Recommendation was withdrawn. <i>2004 Recommendation: Establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement (similar to Government Code Section 21300).</i>
38. The Department take a proactive role in supporting legislation beneficial to improving management of the workers' compensation system. In addition, DPA be advised of the Department's position and lobby for their support.	CLOSED - Prior to December 1995, the Department was directed to defer this recommendation to DPA.
39. Legislation be sponsored by the Department to align the provisions of Labor Code Section 4800 with Section 4850, which applies to all local law enforcement agencies.	CLOSED - Labor Code Section 4800.5 was enacted and appeared to adequately address this recommendation.
40. The Department initiate steps to challenge the Amborn Decision, which effectively entitles a member of the CHP who is disabled temporarily or permanently by an industrial injury to a full year's salary in lieu of disability programs.	OPEN – Prior to 1995, Executive Management decided to take no action related to this recommendation.
41. Propose legislation to provide continuance of salary (to be reimbursed by PERS) from the time the injury is declared permanent and stationary until the disability pension begins.	CLOSED - DPA was considering legislative relief in November 1995. Recommendation withdrawn.
42. Personnel and Training Division with the assistance from the Department's legal counsel and OER, develop a proposal to	OPEN - On January 8, 1993, an Executive Staff decision was made not to change physical demands for managers, but rather to

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
<p>legislatively redefine "incapacitation for continued employment" in Vehicle Code Section 2268 to parallel the standard PERS uses to determine "incapacity" for local law enforcement agencies. That standard is interpreted to mean "the substantial inability of an individual to perform his/her usual duties."</p> <p>NOTE: The proposal needs to address the potential impact of the Americans with Disabilities Act (ADA).</p>	<p>hold everyone to the standards of an officer. Recommendation withdrawn.</p> <p><i>2004 Recommendation: The Department should revisit the 14 critical tasks as they apply to higher-ranking employees and/or employees in administrative positions. It may prevent some IDRs and worker's compensation claims if the tasks are limited to employees below a certain rank.</i></p>
43. Eliminate the existing 19 medical standards and when the new physical demands survey is completed and validated, utilize those standards to evaluate employees for disability retirement.	CLOSED - The 19 medical standards were revised into the 14 Critical Task Statement in 2000. The 14 Critical Tasks continue to be used as the departmental standards to determine full duty status.
44. Personnel and Training Division ensure that DRS includes its computer program the capability to track disability retirements and their relationship to mandatory reinstatements and subsequent retirements.	CLOSED - Recommendation completed and compliance is ongoing based upon use of the HSS database.
45. Evaluate mandatory reinstatement requests more thoroughly to include IU in the review process to identify potential improprieties early and assure appropriate investigative steps are pursued.	OPEN - It does not appear that this recommendation was fully implemented. The 1994 status report states there is a "process in place" and a letter to reinstatementees was developed to outline the Department's expectations. However, there is no indication that policy or procedures exist to ensure that mandatory reinstatement requests be reviewed by workers' compensation fraud investigators.

STATUS OF 1992 RECOMMENDATIONS	
RECOMMENDATION	STATUS
	<i>2004 Action Taken: The WCFU, in conjunction with DRS, will develop procedures to review and track mandatory reinstatement requests for indicators of fraud.</i>
46. Personnel and Training Division initiate steps to form a Workers' Compensation Committee comprised of division chief level representatives from the CHP and equivalent level executives from PERS, SCIF, DPA, Division of Workers' Compensation, and WCAB. California Highway Patrol representatives should include the P&TD Chief and Assistant Chief commanding the BIA.	<p>OPEN - Recommendation not implemented.</p> <p><i>2004 Action Taken: The Department will invite other involved agencies to participate on a committee to explore a wide range of solutions.</i></p>
47. The Department adopt a plan to post audit paid SCIF billings within a reasonable time frame.	<p>OPEN - There is no current mechanism for reviewing SCIF billings.</p> <p><i>2004 Action Taken: The Department will conduct a small scale audit to assess the current accuracy of SCIF's billing process.</i></p>
48. Provide the DPA with a copy of our finding and request DPA amending the SCIF interagency agreement to include provisions requiring assurance that control procedures in processing payments are in place at the SCIF offices.	<p>CLOSED - The current master agreement contains language that requires SCIF to utilize an automated bill review system. The purpose of this system is to ensure proper bill payment.</p>

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California State Senate



STATE SENATOR
QUENTIN L. KOPP

EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

March 1, 1996

STANDING COMMITTEES:
TRANSPORTATION - CHAIRMAN
AGRICULTURE & WATER
RESOURCES
BUDGET AND FISCAL REVIEW
CRIMINAL PROCEDURE
HOUSING AND LAND USE
LOCAL GOVERNMENT
REVENUE AND TAXATION

SELECT COMMITTEES
INFORMATION SERVICES IN
STATE GOVERNMENT -
CHAIRMAN
DEFENSE BASE CLOSURES
MARITIME INDUSTRY
NORTHRIDGE EARTHQUAKE
STATE PROCUREMENT AND
EXPENDITURE PRACTICES
VOTING PRACTICES AND
PROCEDURES

SUBCOMMITTEES
BUDGET SUBCOMMITTEE
NO. 2 ON RESOURCES,
ENVIRONMENTAL
PROTECTION AND
JUDICIARY - CHAIRMAN

JOINT COMMITTEES
JOINT COMMITTEE ON RULES

Dwight Helmick, Jr.
Commissioner
California Highway Patrol
2555 First Avenue
Sacramento, Ca 95818

Dear Mr. Helmick:

The Budget Act of 1992 contained Supplemental Report Language regarding workers' compensation and industrial disability retirement (IDR) costs for the California Highway Patrol. Pursuant to the SRL, the department submitted a report in 1993 addressing the specified concerns.

It is my intention to pursue the 1992 budget action with a budget subcommittee informational hearing on the current status of workers' compensation and IDR costs for the CHP. The hearing is scheduled for March 14, 1996. At that time, I would like the department to present a status report on actions since the 1992-93 Budget and such further actions, if any, as are necessary to address any rising disability related costs. Specifically, I request the following information:

1. The number of workers' compensation claims and the types of injuries being claimed, job-related or otherwise, for each of the past five fiscal years, beginning with 1991-92;
2. Identification of any financial, or otherwise, incentives inherent in the current workers' compensation and IDR programs;
3. A description of specific actions taken to control workers' compensation and IDR costs, including preventive measures by the department, legislative actions, and fraud enforcement tactics by the department;

Mr. Helmick
February 28, 1996
Page Two

4. An assessment of the effect of such actions on workers' compensation costs and the effect on the incidence and costs of IDR for the department;
5. A recommendation for additional cost containment methods, if necessary; and
6. The amount of total outstanding liability for all unsettled workers' compensation and IDR claims.

The above request is in addition to any others that the Legislative Analyst may have.

The immediate and full cooperation of you and your staff is appreciated to ensure that the information is submitted to the Legislative Analyst no later than March 6, 1996. If there are any questions, contact me or Mr. Chris Janzen of the subcommittee staff at 445-5202.

Sincerely yours,


Quentin L. Kopp
Chair, Subcommittee #2

QLK/cdj

PRESENTATION TO THE SENATE BUDGET SUBCOMMITTEE

Commissioner Dwight O. Helmick

California Highway Patrol

March 14, 1996

Good morning/afternoon. I am here today to speak with you about a matter of shared concern which has a significant fiscal impact on California taxpayers -- workers' compensation and industrial disability retirement (IDR) costs for the California Highway Patrol (CHP). Before I discuss the "nuts and bolts" of these costs and the Department's response, please permit me to present two scenarios which illustrate the unique challenges the CHP faces in dealing with this problem.

If you will look at item #2 in the informational package you will see a comparison of the retirement compensations potentially available to an officer. In the first column the annual net service retirement allowance totals slightly over \$37,000.00. The second column depicts this same officer's compensation if he or she claims disability retirement. The annual net retirement allowance alone comes to almost \$5,000.00 more. That does not even include the additional continuing workers' compensation costs which could average \$50,000.00 or more throughout retirement. Most significantly, you can see that the total cash compensation *prior to retirement* is almost \$114,000.00 greater for a disability retirement!

As a comparison, look at a typical former chief's retirement figures (that's item #3 in your package). Without IRC Section 415 (which places limits on the annual benefit that a person can receive from a defined benefit plan like PERS), the annual net retirement allowance would be nearly \$63,000.00.

With 415, it decreases to about \$56,000.00. And if disability retirement is claimed, the annual net retirement allowance would climb to over \$78,000.00. Most importantly, the total cash compensation *prior to retirement* is more than \$273,000.00 greater for a disability retirement!

Because of the nature of the work, most CHP Officers with any substantial time on the job will experience some degree of injury during their careers. Just the normal wear and tear to the body from 30 years of law enforcement activities, add up. Most employees performing these activities do sustain injuries which could result in a legitimate disability claim. If you place yourself in their position -- the end of a long law enforcement career with literally thousands of dollars hanging in the balance--- which compensation would you choose?

As you can clearly see, we face a real dilemma in selecting an approach which adequately responds to legitimate needs while assuring that misuse of the system will be identified and punished. Let me briefly outline how we have responded to this challenge. Since 1993, the CHP has:

- Created a complete Injury and Illness Case Management manual which thoroughly describes the proper approach to this problem.
- Completed mandatory training of all supervisors and managers in injury/illness case management.
- Completely revised the Departmental Occupational Safety manual paying special attention to those activities most likely to result in injury.
- Revised the Evidence Manual to incorporate instruction on safer handling of drugs and other hazardous materials.

- Created a “Coping With Your Injury” booklet which outlines the methods and procedures an employee can utilize to minimize the amount of time required to return to full duty.
- Developed and published an Injury/Illness Prevention manual.

These publications are included in the information package you received. I would be happy to discuss them in detail when you have had the opportunity to become familiar with their contents. Finally, and perhaps most importantly,

- The Department has reorganized its Bureau of Internal Affairs to ensure the CHP will continue to maintain its obligation to preserve the public trust through renewed emphasis on internal integrity.

A key element of this reorganization was the creation of a special four-person Fraud Unit which includes two full-time investigators who devote special attention to questionable disability cases which have been referred to them by the Public Employees Retirement System (PERS), the State Compensation Insurance Fund (SCIF), the CHP Disability and Retirement Section, and our own Division Commanders. The Fraud Unit not only gathers evidence for both criminal charges and other administrative actions, but also acts as a clear deterrent. In addition, the unit provides training to CHP Commanders on Workers’ Compensation fraud issues.

The CHP has also sought to address the substantial increase in the cost of the workers’ compensation program by analyzing vocational rehabilitation benefit awards to identify and reduce inappropriate service levels, eliminate excessive vocational testing,

increase the number of successful return to work plans, and reduce the number of months an injury case is carried on disability payments before a vocational placement is made.

A key factor for consideration when evaluating CHP disability retirements must be the high-risk environment our officers work in. Daily enforcement activity includes not only the physical and emotional stresses associated with subduing combative subjects and arresting armed suspects, but also those so-called "routine" risks inherent in stopping high-speed violators, pursuing those who attempt to evade arrest, and carrying out responsibilities while exposed to moving traffic at accident scenes and other traffic stops. In total, the working environment of the CHP is a higher risk environment than that of many local public safety agencies.

Senator Kopp also has asked me to address six specific questions which he posed in a letter dated March 1. The detailed responses are included in your informational package, but I would like to briefly touch on each issue..

First: Provide a compilation of the workers' compensation claims, and types of injuries being claimed, job-related or otherwise, for each of the past five fiscal years, beginning with 1991-92.

As you can see in item #4 of your package, claims by uniformed personnel have dropped from 5,086 in 1991 to 4,728 in 1995, with a peak of 5,320 in 1993. A majority of claims involve orthopedic problems, with injuries to the back being the most common.

Second: Define the incentives, financial, or otherwise, inherent in the current workers' compensation and industrial disability retirement programs.

Workers' compensation incentives include: a liberal permanent disability rating system; tax free benefits; assignment of the burden of proof to the employer; defining certain classes of injury as presumptive; assessing liability for cost incurred in the discovery process to the employer.

Industrial disability retirement incentives include: 50 percent of employee's retirement income *not subject* to income tax; gainful employment with a non-PERS employer possible even while still drawing *full* retirement benefits; *mandatory* reinstatement to peace officer status at current salary and benefits, should the employee's medical condition improve; and, *exemption* from IRC Section 415 which limits retirement earnings for highly compensated employees.

Third: Describe specific actions taken to control workers' compensation and IDR costs, including preventive measures by the department, legislative actions and fraud enforcement tactics by the Department.

Well, the answer to this question is difficult to put into one paragraph, but let me briefly say that we have taken many steps to control costs including the Injury and Illness Prevention Program, injury case management, and heightened awareness of the dangers of and procedures for safe handling of drugs, chemicals and other hazardous materials.

As I mentioned earlier, the Bureau of Internal Affairs Special Investigation Unit has aggressively pursued IDR fraud. Since its inception, this unit has investigated 85 cases, obtaining five criminal convictions and is currently investigating ten open cases. In addition, there have been eight arrests and eight employee terminations for workers' compensation fraud crimes. Currently there are two criminal prosecution cases

pending. Part of this unit's effectiveness lies in the broad internal publicity given to its efforts. There is no doubt that such high-profile exposure has served as a deterrent to such conduct.

Fourth: Assess the effect of such actions on workers' compensation costs and the effect on the incidence and costs of IDR for the Department.

In addition to what I just mentioned, you have the numbers in front of you in item #4 of your package. Briefly, since fiscal 1992/93, there has been over a ten percent decrease in WCP costs in spite of a \$1.35 million dollar increase in fiscal 1994/95 due to increased charges by SCIF which were negotiated in the DPA master contract. The number of annual disability retirements has fallen from a high of 162 in 1993 to 118 for each of the last two years.

Fifth: Provide CHP recommendations for additional cost containment methods.

Also in item #4 we offer several suggestions for legislation which we believe would help to contain costs. These include "capping" disability retirement benefits for those eligible for a maximum service retirement to include compensation only for medical costs related to the injury; reshaping the medical evaluation process into an arbitration procedure; rewriting Labor Code language to require that WCAB Judges interpret

workers' compensation decisions "equitably, rather than "liberally," as now provided; and establishing of an outside earnings offset for retirees which mirrors current PERS criteria.

Sixth: Calculate the total outstanding liability for all unsettled workers' compensation and IDR claims.

Unfortunately I cannot provide these numbers at this time. This information has been requested from SCIF and PERS and is expected within 25 days. I will be happy to provide the members of the committee with the data as soon as we receive it.

I have outlined the major changes we have taken to minimize the misuse of the system. But realistically there is only so much that we can do. I would like to suggest that the real seeds of change can come from decisions only you can make.

As a Department, we can only manage cases, maintain focus on and response to fraudulent activity and educate our employees on the relevant issues. Unfortunately, we have no control of the workers' compensation and disability retirement system itself. So, we can assure you that where fraud or other misuse is identified, we will take appropriate action. We will continue to aggressively investigate instances where the system is being abused and we will educate all employees about the seriousness of the situation.

But the real change must more appropriately come through a significant transformation in the system itself. Let me restate the suggestions I mentioned earlier:

- Amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement but opt to retire on disability shall receive no additional benefits other than medical costs related to the injury.
- Modify the medical evaluation process to be patterned after the arbitration procedure currently being used to resolve employee/employer relation disputes.
- Amend Labor Code Section 3202 requiring WCAB Judges to interpret workers' compensation laws "equitably" rather than "*liberally* and in favor of the employee" as now directed by the language of the code.
- Establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement. (Similar to Government Code Section 21300).

I believe adoptions of these steps would contribute greatly to reducing the existing monetary incentives of the workers' compensation system.

Thank you for giving me the opportunity to present the CHP perspective on these issues. I would now be happy to respond to any questions you might have.

TYPICAL RETIREMENT
FOR AN OFFICER

Age: 55 Years of Service: 30 Salary: \$4,432.38 Vacation: 400 Hours			Sick Leave: 400 Hours CTO: 40 Hours Personal Leave: 100 Hours		
BENEFIT		SERVICE RETIREMENT		DISABILITY RETIREMENT	
SICK LEAVE		None ¹		<ul style="list-style-type: none">• 400 accrued hours• 120 additional hours earned while on 4800.5 time and sick leave prior to retirement• Total of 520 hours paid• \$13,498.61²	
VACATION		<ul style="list-style-type: none">• 400 accrued hours• 80 additional hours earned during lump sum period• Total of 480 hours paid• \$12,289.78		<ul style="list-style-type: none">• 400 accrued hours• 448 additional hours earned while on 4800.5 time and during lump sum period• Total of 848 hours paid• \$21,557.48²	
CTO		<ul style="list-style-type: none">• 40 hours paid lump sum• \$1,007.36		<ul style="list-style-type: none">• 40 hours paid lump sum• \$1,007.36²	
PERSONAL LEAVE		<ul style="list-style-type: none">• 100 hours paid lump sum• \$2,518.40		<ul style="list-style-type: none">• 100 hours paid lump sum• \$2,518.40²	
4800.5		None		One Year = \$53,188.56 ^{2, 3}	
WORKERS' COMPENSATION		None		<ul style="list-style-type: none">• \$37,847.00 Cash Benefit³• \$12,153.00 Vocational rehabilitation and medical payments• Total \$50,000.00• Paid lifetime medical expenses	
TOTAL CASH COMPENSATION PRIOR TO RETIREMENT		\$15,815.54		\$129,617.41	
ANNUAL <u>NET</u> RETIREMENT ALLOWANCE		\$37,051.56		\$41,886.12	

¹ May count towards service credit.

² Payment could be higher should there be any salary increases while employee is on payroll.

³ This compensation is not subject to federal or state income tax.

TYPICAL RETIREMENT FOR A DEPUTY CHIEF

Chief's Age: 54 Years of Service: 31 Salary: \$8,473.30			
Sick Leave: 1,984 Hours Annual Leave: 640 Hours Personal Leave: 152 Hours			
BENEFIT	SERVICE RETIREMENT <u>WITHOUT</u> APPLYING IRC SECTION 415	SERVICE RETIREMENT APPLYING IRC SECTION 415	DISABILITY RETIREMENT
SICK LEAVE	NONE ¹	NONE ¹	<ul style="list-style-type: none"> 1,984 accrued hours \$96,672.65³
VACATION	<ul style="list-style-type: none"> 640 accrued hours 108 additional hours earned during lump sum period Total of 748 hours paid \$36,460.87 	<ul style="list-style-type: none"> 640 accrued hours 108 additional hours earned during lump sum period Total of 748 hours paid \$36,460.87 	<ul style="list-style-type: none"> 640 accrued hours 864 additional hours earned while on 4800.5 time and during lump sum period Total of 1,504 hours paid \$73,563.65³
PERSONAL LEAVE	<ul style="list-style-type: none"> 152 hours paid lump sum \$7,317.85 	<ul style="list-style-type: none"> 152 hours paid lump sum \$7,317.85 	<ul style="list-style-type: none"> 152 hours paid lump sum \$7,317.85³
4800.5	NONE	NONE	One Year = \$101,679.60 ^{2, 3}
WORKERS' COMPENSATION	NONE	NONE	<ul style="list-style-type: none"> \$37,847.00 Cash Benefit² \$12,153.00 Vocational rehabilitation and medical payments to vendors. Total \$50,000.00 Paid lifetime medical expenses
TOTAL CASH COMPENSATION PRIOR TO RETIREMENT	\$43,778.72	\$43,778.72	\$317,080.75
ANNUAL <u>NET</u> RETIREMENT ALLOWANCE	\$62,845.92	\$56,230.56	\$78,162.12

¹ May count towards service retirement.

² This compensation is not subject to federal or state income tax.

³ Payment could be higher should there be any salary increases while employee is on payroll.

The following are responses to questions regarding CHP Workers' Compensation and Industrial Disability Programs as requested by Honorable Senator Quentin L. Kopp.

Question # 1

The number of open workers' compensation claims per year as reported by the State Compensation Insurance Fund are as follows:

	1991	1992	1993	1994	1995
Uniformed	5,086	5,234	5,320	5,225	4,728
Non-Uniformed	360	434	510	554	592
Total	5,446	5,668	5,830	5,779	5,320

The majority of claims being made are orthopedic, of which injuries to the back are the most common. These claims are classified according to the injured body part as follows: back; lower and upper extremities and neck injuries. Cardiovascular and psychological disorders are also common claims made by uniformed personnel.

Question # 2

Among the most notable financial incentives in the current workers' compensation program are:

- Liberal Permanent Disability Rating System.
- Tax Free Benefits (4800.5, Temporary Disability, Permanent Disability, Vocational Rehabilitation)
- Burden of proof lies with the employer, and the employer is liable for all costs incurred in the process of discovery.
- Certain classes of injuries are presumptive (cardiovascular and pneumonia)

Uniformed employees of the CHP that sustain job-related injuries are entitled to receive full salary continuation benefits for a period of up to 52 weeks pursuant to Labor Code Section 4800.5. If their condition has not stabilized by the time those benefits are exhausted, SCIF provides them, if eligible, with Temporary Disability (TD); Permanent Disability (PD), and Vocational Rehabilitation (VR) benefits.

The Public Employees' Retirement System (PERS) governs all retirement matters for for all employees of the CHP. This includes Service Retirements, Ordinary Retirements, and Industrial Disability Retirements.

Industrial Disability Retirement (IDR) is a retirement benefit afforded to various safety officer categories in both State and municipal jurisdictions. This benefit was established to provide Officers with an income that would meet their basic needs if they suffered an industrial injury that permanently or indefinitely incapacitated their ability to fully perform the duties of a Peace Officer. This retirement benefit was established in recognition of the employment hazards unique to safety officer categories.

The IDR benefit for uniformed members of the CHP is based upon Government Code Section 21292. Pursuant to this section, a patrol member shall be entitled to receive a disability retirement allowance of 50 percent of the average highest twelve months of their salary at the time of retirement.

Among the most notable incentives inherent to the existing industrial disability retirement program are:

- Reduced income tax for retirement allowances.
- No reduction in IDR benefits upon employment outside of PERS contracting agencies.
- Mandatory reinstatement to peace officer status at current salary and benefits.
- IRS Rule 415. Employees on Industrial Disability Retirement are not subject to limitations pursuant to this section.

Question # 3

The Department has placed more emphasis on injury case management through local Area Commanders. Employees have become aware of the factors causing and methods of reducing stress and cumulative trauma disorders. This has been accomplished through the implementation of a new manual containing policy changes regarding injury and illness case management. All Managers and Supervisors have received required in-house training regarding injury and illness case management.

Another step towards controlling costs is the Department's Injury and Illness Prevention Program (IIPP). IIPP requires that all Commands establish an Occupational Safety Committee which shall meet at least quarterly. The responsibilities of the various levels of committees are:

- Departmental Occupational Safety Board (DOSB), the Department's policy-level occupational safety organization reporting directly to the Commissioner.
- Division Occupational Safety Committee(DOSCs), the control-level safety committees for Division operations, assisting the Division Chief in administering occupational safety responsibilities.
- Command Occupational Safety Committee (COSCs), the operational-level committees that assist the Commander in achieving compliance with occupational safety requirements and resolving health and safety issues in the local Command.

In addition, the Department's Evidence Manual has been revised to initiate policy regarding safer handling procedures for drugs, chemicals and other hazardous materials.

A major reorganization of our existing Bureau of Internal Affairs resulted in the creation of a special Investigation Unit (IU). The IU consists of four investigators, two of which are devoted entirely to questionable injury claims to determine if inappropriate actions exist. Since its inception in October 1991, the IU has obtained five criminal convictions and is currently investigating over 10 cases. The IU personnel have focused on comprehensive training of Departmental Managers and Supervisors in how to identify fraud. (Attached are news articles of several noteworthy cases).

Additionally, their efforts to combat fraud have been fully publicized within our Department. This internal "publicity" has served as a deterrent to such conduct and has continued to make our employees aware that the Department will maintain an aggressive posture towards eliminating abuse of the workers' compensation and retirement systems.

Furthermore, uniformed members of the CHP that attempt to voluntarily reinstate are now subject to a more comprehensive background evaluation including physical and psychological medical evaluations.

The Department is strongly committed to providing a safe work environment. This is evident in the comprehensive programs implemented starting with pre-employment evaluations and following through every phase of employment and retirement.

Question # 4

An assessment of the effect of the above mentioned actions on the Departments WCP and IDR programs is best exemplified as follows:

Chart Comparison (uniformed and non-uniformed employees, 4800.5 time included)				
WCP	1991/92	1992/93	1993/94	1994/95
Amount	\$40,972,024	\$42,185,227	\$36,976,431	\$38,286,277 (*)
Change	13.67%	2.96%	-12.34%	3.42%

*(According to DPA there was a 1.35 million dollar increase in service charges by SCIF as negotiated in the master contract with DPA).

IDR	1991	1992	1993	1994	1995
# of Retirements	120	135	162	118	118

Change	8.1%	12.5%	20%	-27.16%	0%
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Questions # 5

Additional cost containment methods recommended are proposed Legislation to:

- Amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury.
- Modify the medical evaluation process to be patterned after the arbitration procedure currently being used to resolve employee/employer relation disputes.
- Amend Labor Code Section 3202 requiring WCAB Judges to interpret workers' compensation laws "equitably" rather than the current language of "liberally and in favor of the employee".
- Establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement. (Similar to Government Code Section 21300).

Questions # 6

The amount of total outstanding liability for all unsettled workers' compensation claims has been requested from SCIF. It is expected it will take a period not to exceed 25 working days to obtain this information.

The amount of total outstanding liability for IDR claims has been requested from PERS. It is expected it will take a period not to exceed 25 working days to obtain this information.

DEPARTMENTAL WORKERS' COMPENSATION EXPENDITURES

WORKERS' COMPENSATION TOTAL EXPENDITURES

F/Y	TD, PD, VR *	MEDICAL	SCIF FEES	IDL	4800.5 TIME	TOTAL PAID	TOTAL PAYROLL	TOTAL W/C COSTS AS % OF PAYROLL
90/91	\$10,605,018	\$13,726,211	\$3,548,917	\$243,605	\$7,920,883	\$36,044,634	\$372,596,000	9.67%
91/92	\$11,231,928	\$15,005,657	\$3,765,981	\$405,458	\$10,563,000	\$40,972,024	\$392,163,000	10.45%
92/93	\$11,406,042	\$15,653,779	\$4,315,279	\$467,068	\$10,343,059	\$42,185,227	\$369,120,000	11.43%
93/94	\$11,091,937	\$13,468,298	\$3,839,006	\$487,230	\$8,089,960	\$36,976,431	\$387,054,630	9.55%
94/95	\$11,175,839	\$15,297,801	\$5,193,915	\$477,435	\$6,141,287	\$38,286,277	\$419,258,488	9.13%
95/96	\$10,673,659	\$13,717,556	\$6,397,153	\$410,687	\$5,023,228	\$36,222,283	\$471,406,423	7.68%
96/97	\$10,774,713	\$15,913,921	\$6,339,018	\$667,412	\$5,944,066	\$39,639,130	\$506,013,326	7.83%
97/98	\$11,757,035	\$14,671,364	\$5,671,718	\$770,725	\$6,462,864	\$39,333,706	\$510,128,719	7.71%
98/99	\$12,125,461	\$16,543,963	\$6,023,152	\$752,035	\$8,012,636	\$43,457,247	\$537,445,352	8.09%
99/00	\$13,291,506	\$18,010,334	\$6,303,427	\$907,340	\$7,173,563	\$45,686,170	\$589,161,638	7.75%
00/01	\$14,030,184	\$20,461,640	\$6,703,032	\$917,617	\$9,465,511	\$51,580,863	\$622,612,000	8.28%
01/02	\$17,115,027	\$21,518,398	\$8,181,533	\$987,081	\$8,283,616	\$56,085,655	\$658,585,304	8.52%
02/03	\$19,660,142	\$27,768,366	\$8,096,856	\$1,116,361	\$8,418,145**	\$65,059,870	\$669,493,011	9.72%

* This category represents the total of all Temporary Disability (TD) benefits, Permanent Disability (PD) benefits, and Vocational Rehabilitation (VR) benefits paid to injured employees by fiscal year.

** 4800.5 figures now include tax refund not previously included.



Worker's Compensation

Data Collection Form

DEMOGRAPHIC INFORMATION

Employee (Last, First MI): _____ ID: _____

Gender: M / F Date of Birth: _____ Date of Hire: _____

RETIREMENT (IDR) INFORMATION

Date of Separation/IDR: _____ Rank when Retired: _____

Reason for IDR (Injury/Illness): _____ Single Event /Cumulative (#121s: __)

CLAIM INFORMATION

Date of injury: _____ Date of Claim: _____

Rank when claim filed: _____ Preventable / Non-preventable

Location at time of injury (Area/Division): _____ / _____

Description of injury: _____

Cause of injury: _____

Assignment when claim filed (circle up to two):

Field

Admin

Investigator

Supervisor / Manager

Pending discipline? Y / N

Total # other 121s filed NOT related to IDR: _____

Documents Reviewed and Attached to File (if not attached, explain why):

___ 121s Related to IDR ___ 3301s Related to IDR ___ Field Folder

Notes



Worker's Compensation

Case Evaluation Form

Category I Items (mandatory detailed review)

- ☐ Rank A/Chief or higher
- ☐ Internal Investigation in progress prior to separation
- ☐ Mechanism of injury not consistent w/severity
- ☐ Injury actually job related unclear
- ☐ Multiple claims filed within 30 day period
- ☐ Discrepancy between injury description on 3301 & CHP 121
- ☐ Questionable (explain) _____

- ☐ Other fraud indicators: _____

Category II Items (2 or more = mandatory detailed review)

- ☐ Not witnessed
- ☐ Cumulative injury
- ☐ Late reported
- ☐ Assignment & injury inconsistent
- ☐ Details vague/unverifiable
- ☐ Claims submitted when employee 48 yrs or older
- ☐ Violation of HPM 10.7/Discrepancy in processing (explain) _____

Category III Items (no further review)

- ☐ Presumptive injury (cardio, cancer)
- ☐ Injury obviously valid

Notes

Reviewed by: _____

Date: _____

Reviewed by: _____

Date: _____

IDR Evaluation Data

	Comm	D/Chief	A/Chief	Captain	Lieutenant	Sergeant	Officer	Total for Category
Criteria								
Internal Investigation in progress prior to separation		1			1	1	8	11
Mechanism of injury not consistent with severity				3	1	1	26	31
Injury actually job related unclear		1	3	1	2	5	16	28
Multiple claims filed within 30 day period		1		3		8	8	20
Discrepancy between injury description on 3301 & CHP 121				1			9	10
121 Marked Questionable		4		4	10	12	51	81
Other fraud indicators			1		1	1	6	9
Not Witnessed		1	4	2	4	7	22	40
Cumulative injury	3	8	11	14	26	75	150	287
Late reported				1	5	6	19	31
Assignment & injury inconsistent				1	1	1	2	5
Details vague/unverifiable	2	1	2	1	7	12	35	60
Claim submitted when employee 48 years or older	2	6	10	16	28	84	182	328
Violation of HPM 10.7/Discrepancy in processing		1	1		4	9	23	38
Presumptive		1	3	2	7	7	77	97
Injury obviously valid			1		1	8	45	55
Totals for Ranks	7	25	36	49	98	237	679	
							Grand Total	1131

Command Compliance with Policy/Procedures on
Workers' Compensation Cases
Review Checklist

Reviewed by: _____

Employee _____ ID# _____

Date of Injury: _____ SCIF Claim Number: _____

SCIF Office: _____ SCIF Contact: _____

Retired due to this injury?: YES/ NO

Policy Under HPM 10.7

1. Employer Date of knowledge (DOK): _____
2. 3301/DWC 1 Provided to employee on: _____ Within 24 hours of DOK?
YES/NO
3. Date CHP 121 signed off by Command: _____ Within 3 days of DOK?
YES/NO
4. Date CHP 121 received by State Fund: _____ Within 8 days of DOK?
YES/NO
5. If CHP 121 was marked questionable, was CHP 121 further documented in narrative section to explain why questionable status was marked? YES/NO
6. Was a separate narrative attached to the CHP 121 to further explain Commander's dispute of claimed injury? YES/NO
7. Did Commander designate preventability? YES/NO If yes, did Commander meet with employee to discuss this finding? YES/NO
8. Did Commander generate/maintain CHP 121D on cases fitting criteria? YES/NO
9. Did Division send a composite CHP 121D to DRS? YES/NO

California Performance Review

Proposals to Address Workers' Compensation and Disability Retirements

In recognizing the demands of Californians for changes in government, Governor Schwarzenegger directed a sweeping reassessment of state government in Executive Order S-5-04, known also as the "California Performance Review (CPR)." In the CPR's September 2004 report, "A Government for the People, for a Change," three proposals addressed workers' compensation, disability retirement, or related topics:

Public Safety Proposal #11 – Change existing law to help CALPERS Investigations Unit prosecute disability fraud cases. CALPERS has extensive responsibility over disbursement and protection of the retirement and disability funds for members of that retirement system. An investigations unit is currently in place to investigate possible abuse of the retirement system. This proposal recommends that the Government Code be modified to clearly define what constitutes disability retirement fraud, the penalties to be imposed and to deny or reduce payments to those convicted of retirement fraud. The proposal also recommends that CALPERS merge investigative functions under a unified state agency.

State Operations Proposal #27 – This proposal recommends that at the Governor's direction, DPA, or its successor immediately begin developing the requirements for a statewide workers' compensation case management tool. It is further recommended that these requirements be completed by July 1, 2005.

State Operations Proposal #51 – This proposal is designed to revisit the criterion that defines the "safety retirement" classification for state employees and the need to limit this designation to employees who truly protect the public. At the Governor's direction, DPA and the State Personnel Board (SPB) would be required to use traditional safety criteria to determine safety membership status.

The text of the CPR proposals along with the discussion from their report is reproduced on the following pages. This CHP report to the Governor is consistent with the intent of the CPR proposals, and expands the range of solutions proposed to address Departmental problems.



Change Existing Law to Help the Investigations Unit Within the California Employees' Retirement System to Prosecute Disability Fraud Cases

Summary

The California Public Employees' Retirement System (CalPERS) maintains an Investigations Unit that employs seven full-time investigators. The unit's primary function is to review those disability claims where there are indicators of possible fraud or abuse. Current law hinders their ability to investigate and prosecute disability fraud cases, and is inconsistent with laws governing other state agencies' anti-fraud units. State statutes should be amended to assist the CalPERS Investigation Unit in investigating and prosecuting disability fraud.

Background

The California Public Employees' Retirement System (CalPERS) administers retirement and health benefits to more than 1.4 million past and present state and local government employees. This includes retirement, disability, and death benefits; administration of Social Security coverage for state employees; and the development, negotiation, and administration of contracts with a number of health maintenance organizations, group hospitals, and medical insurance plans.

Participants in the system's programs include state employees, classified school employees, volunteer firefighters, judges, legislators, and any other public employees whose employer has contracted for benefits administered by CalPERS.

CalPERS is managed by a Board of Administration (the Board) whose officers have a fiduciary duty to protect the trust fund from inappropriate payment of benefits. In 1992, voters approved Proposition 162, which gives the CalPERS Board plenary (complete) authority over the administration of CalPERS operations. The measure, in essence, gave the Board the sole and exclusive authority of the investment and administration of the system's resources, except for the health benefits program, which is funded from the Public Employees' Contingency Reserve Fund.¹ The Investigation Unit falls within the legal office under the administration branch and is therefore independently controlled by the CalPERS Board. The Penal Code defines the investigators as peace officers.²

CalPERS retirement benefits

The basic types of retirement benefits CalPERS provides include:

- Service retirement or “normal” retirement for those eligible, based on age and years of service.
- Disability retirement for members who become disabled and can no longer perform duties of their jobs.
- Industrial disability retirement for eligible employees whose job-related injuries or illnesses resulted in disability.

Retirement benefits are computed using years of service, age at retirement and final compensation. A member’s retirement formula is calculated by the membership category, which is determined based on occupation; employing agency and Government Code; the contract between their employer and CalPERS; and tier in which the member is enrolled.³

Current duties of the Investigation Unit

Currently, the CalPERS Investigation Unit is comprised of one supervising special investigator, five senior special investigators and one special investigator. The unit’s major function is to investigate and, if necessary, prosecute disability retirement fraud. These types of cases are complex and sensitive because of the health issues associated with disability retirements.⁴

The following is a breakdown of the three major disability investigative functions performed by this unit:

- *Disability/Pre-Determination*—These cases involve people who are in the initial stages of the disability retirement process and there is some indication of possible fraud or abuse. Investigators can check these cases by verifying information in medical reports, conducting surveillance and contacting employer witnesses. Any additional information is then submitted to the examining doctors and CalPERS disability evaluation staff. This verification process may support the denial of non-meritorious claims.
- *Disability Appeals*—These are cases where CalPERS has denied a member’s application for disability retirement, and the member has appealed the decision and requested an administrative hearing. The legal office handles these hearings and often refers case information to the investigation unit for appropriate investigative action.
- *Reinstatements*—This type of case involves returning to work those people who are no longer disabled, often involving members who are in the public safety retirement category. These individuals, regardless of age or service, can collect half their salary and other “final compensation” for life if granted an Industrial Disability Retirement. After being approved for Industrial Disability Retirement, their condition may improve to the point they are capable of returning to work. An investigation may be conducted to determine if the member is no longer disabled.⁵



The Investigation Unit mostly focuses on Industrial Disability Retirement, as it normally pays out the highest level of benefits. Other state agencies with similar units include the California Highway Patrol, Department of Insurance and the Department of Corrections.

Oftentimes an investigation will uncover both workers' compensation fraud as well as disability fraud. The California Department of Insurance, for example, can use the Insurance Code to file charges of workers' compensation fraud.⁶ CalPERS, however, must use more general Penal Code violations, such as presenting false claims, grand theft, or perjury since there are no specific codes for disability fraud. Some prosecutors may be reluctant to use these more general Penal Code sections to file charges in a disability fraud case, since they do not always reflect the true nature of the crime. As a result, violators are often charged only with a workers' compensation violation.

In some circumstances, even when a member is found guilty of Penal Code violations in a disability fraud case, the member may not lose their disability benefits. In order for a member to lose disability benefits, the worker must have a job offer and a start date from an employer.⁷ This requirement has made it difficult to keep the member from receiving benefits or requiring the member to pay restitution.

In 1987, CalPERS estimated the average total savings resulting from the denial of a disability claim for a public safety member to be \$182,000.⁸ The calculation was based on 18 cases of members claiming an Industrial Disability Retirement. These members had an average of six years of service and an average age of 34 at the time of their claims. If all 18 cases had been won on appeal or dropped by the member, the potential savings to the state would have been nearly \$3.3 million. It should be noted that the number of members who are eligible for safety retirement has increased substantially since this memorandum was prepared. For example, the number of sworn peace officers has increased significantly in the past 15 years within the Department of Corrections.

Therefore, every member who fraudulently obtains a disability benefit and is properly prosecuted could save the CalPERS Retirement Fund substantial funds, and to a lesser extent the state General Fund, which supplements the Retirement Fund.

The validations system

In 1996, a Disability Validation Team (DVT) was established at CalPERS, which included both Investigations Unit staff and Retirement Program Specialists. DVT utilizes a set of "yellow flag" indicators to better identify and prioritize cases for further review. Generally, all claims involving certain medical conditions (orthopedic, stress, and psychiatric, for example), or where claims are employer-originated and the member contests, are reviewed. The yellow flag indicators are a consolidated list of indicators compiled by a number of local and state agencies.

Recommendations

- A. The Governor should work with the Legislature to amend the Government Code to clearly define what constitutes disability retirement fraud, the penalties to be imposed and to deny or reduce retirement allowances for individuals convicted of disability retirement fraud.

Amending the Government Code would make the law governing disability retirement fraud more consistent with laws regarding other types of fraud, such as workers' compensation fraud. It would also assist the CalPERS Investigation Unit in successfully prosecuting individuals for disability retirement fraud, and may provide a deterrent for CalPERS members.

- B. The Governor recommend to the CalPERS Board of Administration that it merge investigative functions under a unified state agency.

Fiscal Impact

While there are anticipated savings for the first recommendation as a result of program improvements, they cannot be estimated. The second recommendation could result in functions being consolidated and they would come intact with their respective personnel and appropriate budget appropriation. It is anticipated that any positions needed to support the functions will become available as a result of the efficiencies generated by the consolidation.

Endnotes

- ¹ Department of Finance, Governor's Budget 2004–05 (January 9, 2004).
<http://www.documents.dgs.ca.gov/osp/GovernorsBudget05/pdf/scs.pdf> (last visited March 6, 2004).
- ² Pen. C. Section 830.3(h).
- ³ California Public Employees' Retirement System, "CalPERS Retirement Benefits,"
<http://www.calpers.ca.gov/index.jsp?bc=/about/benefits-overview/retirement/retirement-benefits.xml> (last visited June 21, 2004).
- ⁴ Letter from Investigation Unit, CalPERS Legal Office to California Performance Review, Public Safety Team (March 10, 2004).
- ⁵ Letter from Steven Donald, chief investigator, California Public Employees' Retirement System to California Performance Review, Public Safety Team (March 10, 2004).
- ⁶ Ins. C. Section 1871.4.
- ⁷ Letter from Steven Donald, chief investigator, California Public Employees' Retirement System to California Performance Review, Public Safety Team (June 15, 2004).
- ⁸ Memorandum from Steven Donald, chief investigator, California Public Employees' Retirement System (CalPERS), to John Decker, legislative analyst, CalPERS (January 21, 1987).



California Should Create a Statewide Solution to Manage State Employees' Workers Compensation Claims

Summary

Workers' compensation expenses for state government totaled nearly \$502 million in Fiscal Year 2002–2003. Standardized case management tools and processes could save the state a minimum of \$5 million per year. California state agencies must create their own case management process and tools to manage employee workers' compensation cases. Some entities have purchased add-ons to their recently procured human resource software to manage these cases. Most, however, continue to use spreadsheets, "home-built" databases, or manual processes.

Background

The workers' compensation program provides for medical benefits and compensation to employees who are injured on the job. While the Department of Personnel Administration contracts with the State Compensation Insurance Fund (SCIF) for workers' compensation benefits, technology solutions are not part of what SCIF offers. SCIF is planning to release a case management interface to its online claims submission in early July 2004 to enable departments to extract case information.¹ While this is a step in the right direction, it is not a case management tool.

A coordinated effort—between the employer, employee, treating physician and claims professional—results in quicker recovery times for employees and lower cost to the state.²

In order to properly manage each case, departments need current, accurate data from SCIF and from medical providers in order to confirm an employee's health status and any possible work restrictions. Departments can save money and increase productivity when they are able to find limited duty positions for recovering employees elsewhere within the department. It usually costs less for a department to purchase adaptive equipment for an employee, if necessary, than it does to pay a month's compensation for an injured employee. Departments can also save money by avoiding delays in returning employees to work.

There are specific, event-driven steps to case management. For example, an injured employee is first assessed by a physician, who submits the report to the employee's department. The employee and his/her manager discuss recommended time off. There will be follow-up examinations, physical therapy, etc. Without a comprehensive automated case management tool which uses a calendaring feature, many departments must rely on partially automated or

heavily manual processes with cumbersome methods. This means excessive processing time and missed opportunities to speedily return employees to work in limited capacities.

Some departments have moved toward automation. The California Department of Transportation is piloting an integrated case management module from PeopleSoft.³ The California Department of Forestry and Fire Protection uses a Microsoft Access case management database created in 1998 to track its open caseload.⁴ The California Highway Patrol uses a custom solution by Oracle developed in 1995–1996.⁵

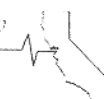
The Franchise Tax Board (FTB) is implementing CompWatch, a commercial off-the-shelf software solution. FTB has an estimated 6,000 permanent full-time employees and an additional workforce of 1,000 seasonal staff. It generates approximately 15 to 20 new workers' compensation claims per month, with an average annual caseload of 290 active cases, which is small in comparison to that of larger departments. Five full-time staff manage these cases and process paperwork in an effort to meet its compliance regulations and to return the employees to work as soon as possible.⁶

Even before implementing its automated case management tool, FTB's workers' compensation program was considered well managed.⁷ However, FTB wanted a more frequent review of each case in order to follow up on details from medical providers and determine actual working condition limitations so that staff could return to work more quickly.⁸

Another benefit from a standard tool is that it allows caseworkers who move from department to department to do so without having to be retrained, making them effective from their first day on the job. Sufficiently trained and motivated caseworkers are a component that cannot be leveraged without adequate standards and tools.

State law requires employers to report workers' compensation claims within five to 14 days, depending on the form used.⁹ However, it takes an average of 12 working days for most claims to be submitted to SCIF.¹⁰ There are numerous reasons for delays. For example, an employee and his/her supervisor may be offsite and unable to complete claims immediately, such as when a state firefighter is injured fighting a forest fire which lasts ten days. The employee may leave but his/her supervisor may have to remain on the fire lines for some days after the injury occurs.

It is important for claims to get to SCIF as quickly as possible. It keeps costs down and increases the likelihood of returning employees to work as soon as possible. While penalties for late filing are rare, there is a significant cost associated with late filing. A claims adjuster has 90 days from the date of injury to accept or deny a workers' compensation claim. Considering the lead time necessary to get the employee to a medical provider for an assessment is generally 60 days, losing time in those first few weeks can result in acceptance of



claims by default that should have been denied. That, in turn, increases the overall cost to the state.

Recommendation

The Governor should direct the Department of Personnel Administration or its successor to immediately begin developing the requirements for a statewide workers' compensation case management tool. These requirements should be completed by July 1, 2005.

This system must include electronic interfaces with medical providers where available and with the State Compensation Insurance Fund. It must also interface with the State Controller's Office 21st Century Project, which will be a payroll database, since payroll information is essential to proper case management and claims reporting. The portion of the 21st Century Project necessary for implementing an automated workers' compensation solution is scheduled for implementation in FY 2007–2008. The workers' compensation case management solution should be implemented in FY 2008–2009.¹¹

Fiscal Impact

The one-time cost to acquire a standard Workers' Compensation case management system that integrates with the State Controller's new payroll system is estimated to be less than \$5 million, with \$25,000 annual operating costs. Department of Personnel Administration has estimated that the cycle time for processing all claims, except permanent disability and vocational rehabilitation, could be reduced by 1 percent to 9 percent with a standard case management system. Assuming a dollar savings proportionate to the cycle time improvement, these claim types, which currently cost about \$380 million annually, could have an annual cost reduction of \$4 million to \$34 million with this tool.

General Fund
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$0	\$2,500	(\$2,500)	0
2005–06	\$2,000	\$12	\$1,988	0
2006–07	\$2,000	\$12	\$1,988	0
2007–08	\$2,000	\$12	\$1,988	0
2008–09	\$2,000	\$12	\$1,988	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

Other Funds
(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$0	\$2,500	(\$2,500)	0
2005–06	\$2,000	\$13	\$1,987	0
2006–07	\$2,000	\$13	\$1,987	0
2007–08	\$2,000	\$13	\$1,987	0
2008–09	\$2,000	\$13	\$1,987	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

Endnotes

- ¹ Interview with Colette R. Barritt, state contract services consultant, State Compensation Insurance Fund, Sacramento, California (May 6, 2004).
- ² State Compensation Insurance Fund, "The Three Keys to Savings", http://www.scif.com/pdf/may2004_reform/3_keys.pdf (last visited June 13, 2004).
- ³ Interview with Dave Schaefer, return to work coordinator, California Department of Transportation, Sacramento, California (May 21, 2004).
- ⁴ Interview with Susan Magnuson, California Department of Forestry, Sacramento, California (June 2, 2004).
- ⁵ Interview with Jovita Vierria, California Highway Patrol, Sacramento, California (June 2, 2004).
- ⁶ Interview with Ronda Ellingsworth, workers' compensation manager, California Franchise Tax Board, Sacramento, California (March 19, 2004 and May 17, 2004).
- ⁷ Interview with Sue Kane, workers' compensation program manager, Department of Personnel Administration, Benefits Division (May 6, 2004 and May 17, 2004).
- ⁸ Interview with Ronda Ellingsworth, workers' compensation manager, California Franchise Tax Board, Sacramento, California (March 19, 2004 and May 17, 2004).
- ⁹ Labor C. section 6409.1.
- ¹⁰ Interview with Sue Kane.
- ¹¹ California State Controller's Office, "21st Century Project Feasibility Study Report" (Sacramento, California, February 13, 2004), pp. 5–14.



SO 51

Controlling Enhanced Retirement Costs

Summary

Legislation established enhanced retirement plans in California to compensate employees who protect the public. These employees must remain physically fit because they are at severe risk of injury or death in the course of their duties. Over time, however, union negotiations and legislation have increased the number of so-called “safety” designations by granting them to employee groups that do not meet established safety criteria. The purpose and applicability of safety designations should be reviewed to ensure that safety status criteria are well defined and applied consistently so the state does not accrue unnecessary costs.

Background

When Chapter 700 of the Statutes of 1931 created the California Public Employees’ Retirement System (CalPERS), all state members received the same retirement benefits.¹ In 1935, the first “safety” category was created for the California Highway Patrol (CHP) and included an enhanced retirement formula in addition to special industrial death and disability benefits. In 1947, firefighters and fish and game wardens also received improved retirement benefits and since then, many other employee groups have received safety status as well.²

Due to the increasing number of employee groups attempting to achieve safety status through legislation, AB 927 was passed in 1974 mandating the State Personnel Board (SPB) to establish criteria for safety membership and determine which classes in the civil service met the criteria.³ The established criteria relied primarily on the following two principles: 1) the employee is actively engaged in protecting the public and 2) there is an expectation that the employee be physically fit in order to accomplish this duty.

Defining the term “safety”

Safety retirements and industrial disabilities are a confusing topic, made more so by the fact that there are several retirement plans referred to as “safety” as well as a single and specific retirement plan called “State Safety.” In this paper, the term “safety” refers to all employees who work in the categories of California Highway Patrol (CHP), State Peace Officer and Firefighter (PO/FF), and State Safety. The term “State Safety” refers to just the State Safety retirement plan.

In response to the State Employer-Employee Relations Act of 1977, the Department of Personnel Administration was created in 1979 to represent the Governor in collective bargaining. As a result of collective bargaining, another safety category was created for Peace Officers and Firefighters (PO/FF) in 1984.⁴

In 1996, DPA began to study the method used to determine safety membership and concluded it was overly cumbersome and lengthy. In response, AB 528 was passed in 1998 and granted increased authority to DPA and SPB to determine safety status via the collective bargaining process without the need for accompanying legislation. The criteria for membership in the "state safety" classifications was modified to require all of the following:

1) the protection and safeguarding of the public and property, 2) the control and supervision of inmates, youthful offenders, and state mental facility Penal Code offenders, and 3) the capability to respond in emergency situations and to provide a level of service to the public such that the safety of the public and of property is not jeopardized, as part of the conditions of employment.⁵

In 1999, SB 400 was passed and enhanced the retirement formulas as shown in Exhibit 1. This bill re-opened the door to safety legislation as an increasing number of employee groups argued for their right to be part of the safety retirement system without going through DPA and SPB safety status criteria and collective bargaining process.

Exhibit 1

SB 400 Enhanced Retirement Benefits

Retirement Plan	Before	After
State Miscellaneous, Tier 1	2% at 60	2% at 55
California Highway Patrol (CHP)	2% at 50	3% at 50
State Peace Officers & Firefighters (PO/FF)	2.5% at 55	3% at 55
State Safety	2% at 55	2.5% at 55

*Source: Office of Senate Floor Analyses, Senate Bill SB 400, Senate Rules Committee, 1999**

The current situation

In 2001, Governor Gray Davis signed SB 183. Effective July 1, 2004, this bill will bypass the established safety status criteria and reclassify 3,500 miscellaneous tier 1, tier 2, and industrial employees to the safety retirement classifications. The cost of providing these enhanced retirements is about \$8.9 million annually.⁷ The reclassification includes members who work as milk inspectors, DMV examiners and CHP dispatchers.⁸

According to the bill's sponsor, the California Union of Safety Employees (CAUSE), these reclassifications will help recognize their members for the public safety work they do and will place most of their members under the same retirement formula, thus resolving an issue that tended to divide their membership.⁹

Enhanced retirement benefits

Safety employees receive enhanced retirement benefits to encourage them to retire earlier than employees grouped into the state's miscellaneous and industrial retirement plans. This benefit is based on the presumption that safety members in their late 50s and 60s are physically less capable of apprehending criminals, rescuing people, and responding quickly in emergencies.



The enhanced benefits include an increased retirement formula, a retirement cap that discourages them from working past a set age, and an industrial disability retirement that ensures that they will receive financial support in the event they are substantially injured in the course of their duties.

Safety membership is growing

As a whole, safety retirement memberships have grown significantly in the past few years. Exhibit 2 shows that from 1998 to 2003, CHP membership has grown 64.3 percent, Police Officers and Firefighters have grown 30.6 percent, and State Safety membership is up 39.8 percent.

Exhibit 2								
Retirement Memberships by Category								
Plans	Data as of June 30 each year						6 year changes by	
	1998	1999	2000	2001	2002	2003	Members	Percent
Tier 1	102,287	103,898	131,306	145,727	158,244	158,687	56,400	55.1%
Tier 2	42,602	54,111	34,912	25,097	18,222	16,384	-26,218	-61.5%
Industrial	8,093	8,980	9,277	9,374	9,105	9,144	1,051	13.0%
Safety	10,801	13,766	13,972	15,262	15,436	15,103	4,302	39.8%
PO/FF	31,810	38,021	39,155	40,598	40,560	41,531	9,721	30.6%
CHP	6,370	6,542	6,557	6,677	6,830	10,463	4,093	64.3%
Total	201,963	225,318	235,179	242,735	248,397	251,312	49,349	19.6%

Source: CalPERS—State & Schools Actuarial Valuation, Summary of Participant Data, 1998 through 2003

California's retirement contribution costs

Increases in the number of Safety, Peace Officer/Firefighter and Highway patrol memberships are significant because, as shown in Exhibit 3, the state's annual retirement contribution costs for these safety employees are far greater than the costs for miscellaneous tier 1, tier 2, and industrial employees.

Exhibit 3**California Retirement Plan Rates and Contributions**

Plans	<u>Basic Benefit</u> ^a		<u>Contributions</u>	
	Per Year of Service ^b	When Retiring at Age	Employee Contribution ^c	2003–04 State Contribution
Miscellaneous:				
Tier 1	2.0%	55	5%	14.8%
Tier 2	1.25	65	—	10.3
Industrial	2	55	5	11.1
Safety	2.5	55	6	21.9
Peace Officer/Firefighter	3	55	8	20.3
Highway Patrol	3	50	8	32.7

^a Benefits vary by age, with smaller percentages at younger ages and higher percentages at ages above those listed in some cases.

^b Percent of highest salary for 12 consecutive months.

^c Pursuant to collective bargaining agreements, some employees at the present time pay none or only a portion of the amount shown.

Source: Legislative Analyst's Office, Analysis of the 2004-05 Budget Bill, Alternative Retirement Benefit Programs, 2/1/2004

Recommendations

- A. The Governor should direct the Department of Personnel Administration (DPA), or its successor, and request that the State Personnel Board (SPB), or its successor, use traditional safety criteria to determine safety membership status.

The pertinent question is: At what level of risk should the state offer enhanced retirement packages? The SPB and DPA should reevaluate and update the state's safety status criteria and monitor and advise the Governor on all legislation affecting safety retirement memberships.

The criteria should also include the standard of "primary refusal" in addition to the criteria of "public protection" and "physical fitness." In short, if an employee can refuse to respond in an emergency, then they do not meet the criteria for safety status.¹⁰

An example of "primary refusal" would be a scenario whereby an angry person enters a state building with a handgun. Most employees would refuse to respond and would instead dive under their desk to escape. A safety member, however, would be bound by their job duties to respond and it would be a clear dereliction of their duties if they did not.



- B. The Governor should direct the Department of Personnel Administration, or its successor, to replace the use of safety designations with industrial memberships.**

The purpose of safety retirement is to encourage “public protective” and “physically fit” employees to retire earlier and as such, it makes little sense to offer the same retirement benefits to employees in classifications that may improve over time such as psychiatrists and podiatrists. The Department of Personnel Administration, or the successor entity, should reward hard-to-recruit employees with better pay and industrial death and disability benefits instead of safety retirement. Reclassifying these classes from “safety” to “industrial” ensures that employees who work in risky jobs are compensated by pay and insurance in case of injury, but are not encouraged to retire early. This also reduces the number of safety retirement members, which in turn reduces the state’s overall retirement contributions.

- C. The Governor should request the California Public Employee’s Retirement System to re-examine the state’s industrial disability presumptions.**

As the costs of disability retirements continue to rise due to an increasing number of safety members, it would benefit the state to re-examine the Government Codes to determine if all of the presumptions in place are accurate and substantiated by empirical evidence. CalPERS should review the current criteria used to determine industrial disability and compare it with actuarial risk data used by insurance companies. The administration should use the results of this study to sponsor legislation that makes the criteria accurate and cost effective.

Fiscal Impact

Recommendations A and B

Exhibit 4 assumes an average salary of about \$52,000 per employee and shows that the state’s retirement contribution costs for state safety retirement employees are significantly higher than the costs for industrial employees.

Exhibit 4**California Retirement Plans**

Plans ^a	Per Year of Service ^b	When Retiring at Age	Employee Contribution ^c	2003-04 State Contribution	Average Salary (Rounded)	State's annual contribution
Miscellaneous:						
Tier 1	2.0%	55	5%	14.8%	52,000	7,696
Tier 2	1.25	65	-	10.3%	52,000	5,356
Industrial	2	55	5	11.1%	52,000	5,772
Safety	2.5	55	6	21.9%	52,000	11,388
Peace Officer/Firefighter	3	55	8	20.3%	52,000	10,556
Highway Patrol	3	50	8	32.7%	52,000	17,004

^a Benefits vary by age, with smaller percentages at younger ages and higher percentages at ages above those listed in some cases.

^b Percent of highest salary for 12 consecutive months.

^c Pursuant to collective bargaining agreements, some employees at the present time pay none or only a portion of the amount shown.

The state's annual retirement contribution is about \$11,388 for a state safety employee and about \$7,696 for an industrial employee resulting in a difference of about \$5,516 per employee per year. As such, if only 100 state safety employees are reclassified to the industrial retirement plan, the state would realize an annual savings of about \$.5 million. If 500 state safety employees were reclassified, the savings would equal about \$2.8 million per year.¹¹

The retirement system may also realize a savings from these reclassifications in the form of decreased annual benefit costs. Exhibit 5 assumes that an employee has 25 years of service and an average salary of about \$52,000. The annual benefit paid by CalPERS for a state safety employee is about \$32,500 while the benefit for an industrial employee is about \$26,000. The annual retirement benefit cost difference between these is about \$6,500 per employee per year.

Exhibit 5**Annual Benefit for Retirement Plans**

Plans	Per Year Of Service	Years of Service	Average Salary (Rounded)	Annual Benefit
Miscellaneous:				
Tier 1	2.0%	25	52,000	26,000
Tier 2	1.3%	25	52,000	16,250
Industrial	2.0%	25	52,000	26,000
Safety	2.5%	25	52,000	32,500
Peace Officer/ Firefighter	3.0%	25	52,000	39,000
Highway Patrol	3.0%	25	52,000	39,000



If 100 employees were reclassified from the state safety plan to the industrial plan, then the retirement system would realize an average annual savings of about \$650,000. If 500 employees were reclassified, then the savings would increase to about \$3.2 million per year.

Recommendation C

There would be no additional administrative costs for this; however, no fiscal savings may result since reducing the number of presumptions in the California Government Code may result in an increase in the number of lawsuits brought by employees against the state. An example of the types of lawsuits may be an employee trying to prove that fighting fires caused their lung cancer, as opposed to a heavy cigarette smoking habit.

Endnotes

- ¹ Gov. C. Section 20000.
- ² California Public Employees' Retirement System, Office of Governmental Affairs, "Agenda Item 5, Safety Membership Legislation, to Members of the Benefits and Program Administration Committee" (Sacramento, California, October 16, 2001).
- ³ AB 927, Sacramento, California, 1974.
- ⁴ Little Hoover Commission, "Too Many Agencies, Too Many Rules: Reforming California's Civil Service" (Sacramento, California, April 1995), p. 13.
- ⁵ Memorandum from the State Personnel Board, Merit Employment and Technical Resources Division, to State Personnel Board (June 8–9, 2004).
- ⁶ Senate Rules Committee, "Office of Senate Floor Analyses, SB 400," (Sacramento, California, 1999).
- ⁷ Senate Rules Committee, "Office of Senate Floor Analyses, SB 183," (Sacramento, California, 2001).
- ⁸ John Hill and Dorothy Korber, "Pension Jackpot, Many more winning safety-worker label," "Sacramento Bee" (May 9, 2004).
- ⁹ Senate Rules Committee, "Office of Senate Floor Analyses, SB 183."
- ¹⁰ California Public Employees' Retirement System, "The Journal: California's Public Retirement News Source" (Sacramento, California, February/March, 1999).
- ¹¹ Legislative Analyst's Office, "Analysis of the 2004–05 Budget Bill, Alternative Retirement Benefit Programs" (Sacramento, California, February 1, 2004).

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

CALIFORNIA HIGHWAY PATROL OFFICER TASK STATEMENTS

**Anatomic, Physiologic, Biomechanic, and
Psychomotor Component Focus**

Work Sample

- | | |
|---|---|
| 1. Lower Extremity Dynamic
Muscle Strength
Anaerobic Power | Run up and down stairs (minimum one flight 13 steps - 9 inch risers). Ascend/descend a 40-foot embankment. |
| 2. Lower & Upper Extremity
Static & Dynamic Muscle Strength
Aerobic Power | Crawl/crouch/walk 50 feet. Demonstrate proper misdemeanor/felony handcuffing techniques. Conduct vehicle inventory search. Conduct building search. |
| 3. Upper & Lower Extremity
Static & Dynamic Strength
Aerobic Power | Extract a 200-pound victim from a vehicle; lift, carry, and/or drag the victim 50 feet. |
| 4. Anaerobic Power & Capacity
Aerobic Power & Capacity
Lower Extremity Dynamic Muscle
Strength | Exit vehicle, sprint 50 yards, vault 3-foot median barrier, run 20 yards up a 40 percent grade. |
| 5. Lower & Upper Extremity
Dynamic muscle Strength
Aerobic Power | After 100-yard chase, physically subdue and handcuff combative subject. Remove spilled loads or traffic hazards, such as lumber, large rocks or sacks of heavy material from roadway. |
| 6. Balance, Flexibility, & Agility | Perform a full standing search, preliminary frisk, or changing a flat tire, utilizing proper techniques. |
| 7. Eye-Hand & Foot Coordination
Movement & Reaction Time Response
Control Precision | Engage in high-speed vehicle pursuit in an emergency situation utilizing all emergency equipment. |
| 8. Balance & Kinesthetic Sense | Demonstrate field sobriety tests. |
| 9. Ambidexterity | Draw and fire weapon at target using nondominant and dominant hands. |
| 10. Ambidexterity Arm-Hand Steadiness | Reload weapon, inserting magazine with either hand. |
| 11. Manual and Finger Dexterity | Load, fire, and reload shotgun shells from a shotgun. Operate a mobile digital computer. |
| 12. Visual Acuity, Color Vision | Demonstrate binocular vision and the ability to distinguish registration indicia under adverse lighting conditions.
Demonstrate ability to distinguish colors of vehicles and clothing of suspects. |
| 13. Auditory Sense | Immediately identify sounds which may indicate impending hazards and distinguish direction. |
| 14. Aerobic Capacity
Total Body Muscle Strength Endurance | Dressed in full uniform, drive, stand, or direct traffic for extended periods of time under varied adverse traffic and weather conditions. This would include the wearing of a Kevlar helmet, when appropriate. |